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WHO: The Office of the Federal Register.

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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.

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WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Civil Service Retirement System; Coverage

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting rules on the continuation of civil service retirement coverage and benefits for career civilian employees of (1) the Federal Aviation Administration permanently assigned to Washington National Airport and Dulles International Airport following the lease of the airports to the Metropolitan Washington Airport Authority and (2) the United States House of Representatives permanently assigned to the food service operations of the House of Representatives after those operations have been transferred to a private contractor.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202)–632–5560.

SUPPLEMENTARY INFORMATION: Pub. L. 99–591, enacted October 30, 1986, which authorized the Secretary of Transportation to lease Washington National Airport and Dulles International Airport to the Metropolitan Washington Airport Authority, also permitted the continuation of civil service retirement coverage and benefits for career civilian employees of the Federal Aviation Administration permanently assigned to the two airports. On May 21, 1987, OPM published and requested comments on interim rules (52 FR 19125) to provide continued civil service retirement coverage for these workers.

Pub. L. 99–500, enacted October 18, 1986, permitted food service employees of the House of Representatives to retain their civil service retirement coverage and benefits following the transfer of the food service operation to a private contractor. On February 19, 1987, OPM published and requested comments on interim rules (52 FR 5069) to provide continued civil service retirement coverage for these workers.

No comments were received on either set of interim rules.

Both sets of interim rules were mistakenly placed in Subpart C of Part 831. Subpart C regulates credit for service. Subpart B regulates coverage. Since the rules concern coverage under the Civil Service Retirement System, they should have been placed in Subpart B of Part 831. The final rules correct this erroneous placement.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

List of Subjects in 5 CFR Part 831

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

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 831—RETIREMENT

Accordingly, OPM is adopting its interim rules published on February 19, 1987, at 52 FR 5069, and on May 21, 1987, at 52 FR 19125, as final rules, with the changes set forth below:

Subpart B—Coverage

1. The authority citation for Subpart B of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

§§ 831.307 and 831.308 [Redesignated as §§ 831.202 and 831.203]

2. Sections 831.307 and 831.308 are redesignated §§ 831.202 and 831.203, respectively, and the heading of each section is revised to read as follows:

§ 831.202 Continuation of coverage for food service employees of the House of Representatives.

* * * * *

§ 831.203 Continuation of coverage for employees of the Metropolitan Washington Airports Authority.

* * * * *

[FR Doc. 88–6732 Filed 3–28–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88–018]

Importation of Apples, Peaches, and Citrus From Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by specifying definite areas in Sonora, Mexico, which the Administrator of the Animal and Plant Health Inspection Service has determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches, and tangerines may be imported without treatment for these pests. This action will allow the importation in accordance with the regulations of these fruits from the specified definite areas.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below

as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States.

On December 29, 1987, we published in the **Federal Register** (52 FR 49026–49028, Docket Number 87–176), a document proposing to amend Part 319 of the regulations by allowing apples, grapefruit, oranges, peaches, and tangerines to be imported from certain municipalities in Sonora, Mexico (Altar, Atil, Caborca, Carbo, Empalme, Guaymas, Hermosillo, Pitiquito, Puerto Penasco, and San Miguel), without treatment for five fruit flies known to occur in Mexico. The fruit would be imported in accordance with § 319.56–2(e), which contains provisions for importation of fruits and vegetables that come from definite areas free from insect pests when the fruits and vegetables, and the definite areas, meet certain conditions contained in § 319.56–2.

The Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined that definite areas in the state of Sonora, Mexico, meet all the criteria contained in §§ 319.56–2(e)(4) and 319.56–2(f) for importation of fruit from definite areas and districts free from certain injurious insects, specifically five types of fruit flies (*Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus*), which are known to occur in Mexico and attack apples, grapefruit, oranges, peaches, and/or tangerines.

Comments

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before January 28, 1988. We received 42 comments from fruit growers and shippers, other individuals and associations, and state agencies. Of these comments, 37 supported the proposal and five did not support the proposal.

Four commenters asserted that the proposal could not be adequately reviewed because it did not contain detailed procedures of the surveys and pest exclusion activities the Mexican Ministry of Agriculture is using to ensure that the definite areas in Mexico are free from fruit flies.

The Mexican Ministry of Agriculture has submitted written detailed procedures for surveys and pest exclusion activities to the Administrator of APHIS, and the Administrator has reviewed these procedures and found them to meet the requirements of § 319.56–2. These procedures were placed in the rulemaking record and were available on request. We do not believe it was necessary to include these procedures in the proposed rulemaking docket published in the **Federal Register.** It was only necessary to determine that the procedures met the requirements of the regulations and to make them available to interested persons. This was done. For those who wish to examine the detailed procedures, a copy of them may be obtained by writing to the contact person listed in the preamble of this rule.

One commenter maintained that the rule would not have an impact on the economy of less than $100 million, as stated in the Executive Order 12291 section of the proposal, because the California orange industry alone represents over one billion dollars, and will be affected by the rule.

Our evaluation for Executive Order 12291 concerned economic effects, not merely the size of affected industries. We believe that the effects of allowing fruit from Sonora to enter in accordance with this rule will be far less than $100 million for the reasons stated in the proposal and later in this docket. Also, the Agricultural Counselor of the Mexican Embassy has informed us that the value of Sonoran oranges, apples and peaches available annually for export to the United States is approximately $20 million. The value of tangerines and grapefruit available for export from Sonora is not more than $20 million.

One commenter asked how long controls have been in place to exclude fruit flies and fruit fly-infested materials from entering the definite areas. A fruit fly program has been in effect in the definite areas in Sonora since 1982.

Several commenters requested that a public hearing be held to provide more details on the proposal and the procedures implemented by the Mexican Ministry of Agriculture to exclude fruit flies from the definite areas.

The purpose of a public hearing on a rule is not to provide further details on a proposed rule, but to accept comments from the public. We have made our reasoning and the basis for the rule available through publication in the **Federal Register**, and the detailed enforcement procedures of the Mexican Ministry of Agriculture were and are available upon request, as noted above. We have accepted and considered written comments on the proposed rule, and have not received any requests to extend the comment period. Therefore, we do not plan to hold a public hearing.

Miscellaneous

Due to changes in agency operating procedures, we are changing the term "Deputy Administrator" to "Administrator" throughout § 319.56–2.

Based on the rationale set forth in this document and in the proposal, we are amending the regulations as proposed.

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.

The primary effect of adoption of this proposal will be to allow the importation of apples, grapefruit, oranges, peaches, and tangerines, from the listed definite areas without treatment for the five listed fruit flies. This should increase imports of these articles, by lowering the import costs through eliminating the cost of treatments, and would result in increased competition for United States growers of these articles. Adoption of this proposal may have economic effects on importers of these articles, on fumigators at the Mexican border, and on domestic growers, distributors, and retailers of these fruits.

The scale of these effects should be very small. Less than 1% of the citrus, apples, and peaches consumed in the United States comes from Sonora. While the amount imported should increase slightly after adoption of this proposal, Sonora is not a major production area for these articles and cannot supply much more than is currently being imported; we therefore believe that Sonora will continue to supply much less than 1% of United States citrus, apple, and peach consumption.

Furthermore, imported Sonoran fruit may be marketed in all parts of the United States, and the effects of this importation would be distributed over hundreds of thousands of small fruit growers, distributors, and retailers. With such a dispersed market, and such a

large number of small entities involved, we do not expect a significant economic impact on a substantial number of small entities.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Effective Date

The Acting Administrator, Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making it effective upon signature. Importers in the United States have expressed interest in importing peaches and citrus from Sonora this season, and the shipping season for this fruit has begun. Delaying the effective date of this rule could cause economic losses for importers.

Executive Order 12372

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

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant diseases, Plant pests, Plants agriculture, Quarantine, Transportation.

Accordingly, 7 CFR Part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56–2, the term "Deputy Administrator" is changed to read "Administrator" each time it appears.

3. In § 319.56–2, paragraph (g) is redesignated as (i).

4. In § 319.56–2, new paragraphs (g) and (h) are added to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(g) Each box of fruit or vegetables imported into the United States in accordance with § 319.56–2(e) (3) or (4) and § 319.56–2(f) must be clearly labelled with:

(1) The name of the orchard or grove of origin, or the name of the grower, and

(2) The name of the municipality and state in which it was produced, and

(3) The type and amount of fruit it contains.

(h) The Administrator has determined that the following municipalities in Sonora, Mexico, meet the criteria of § 319.56–2 (e) and (f) with regard to the insect pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Altar; Atil; Caborca; Carbo; Empalme; Guaymas; Hermosillo; Pitiquito; Puerto Penasco, and San Miguel. Apples, grapefruit, oranges, peaches, and tangerines may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

Done in Washington, DC, on this 24th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–6849 Filed 3–28–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A36]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Southern Illinois order by expanding the marketing area to include the City of St. Louis, 12 eastern Missouri counties, and part of St. Clair County, Illinois. The amended order is redesignated as the "Southern Illinois-Eastern Missouri" order. Other major changes pertain to the pricing of milk in the vicinity of Quincy, Illinois, the standards for regulating plants and the amount and manner in which milk of dairy farmers may be shipped to manufacturing plants and still be priced under the order. All of the changes are based on industry proposals considered at a public hearing held on December 9–11, 1986 and are necessary to reflect structural changes in the market and to promote the orderly and efficient marketing of milk by producers and handlers.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued November 18, 1986; published November 21, 1986 (51 FR 42109).

Emergency Partial Decision: Issued January 20, 1987; published January 23, 1987 (52 FR 2537).

Order Amending Order: Issued January 28, 1987; published February 3, 1987 (52 FR 3215).

Recommended Decision: Issued November 9, 1987; published November 13, 1987 (52 FR 43590).

Final Decision: Issued February 18, 1988; published February 26, 1988 (53 FR 5777).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Southern Illinois order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Illinois marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended and redesignated as the Southern Illinois-Eastern Missouri order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Southern Illinois-Eastern Missouri marketing area; and the minimum prices specified in the Southern Illinois-Eastern Missouri order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The Southern Illinois-Eastern Missouri order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the Southern Illinois-Eastern Missouri order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the Southern Illinois-Eastern Missouri marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of the Southern Illinois-Eastern Missouri order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the Southern Illinois-Eastern Missouri order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southern Illinois marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby redesignated and amended, as follows:

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

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

2. The term "Southern Illinois" is changed to "Southern Illinois-Eastern Missouri" in: (a) The heading for Part 1032 and (b) in two places in § 1032.7(d)(3).

3. Section 1032.2 is revised to read as follows:

§ 1032.2 Southern Illinois-Eastern Missouri marketing area.

"Southern Illinois-Eastern Missouri marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties and the city of St. Louis, including all municipal corporations therein and all institutions owned or operated by the Federal, State, county or municipal governments located wholly or partially within such territory:

Base Zone—In the State of Illinois

Bond	Jefferson
Calhoun	Jersey
Christian	Lawrence
Clark	Macoupin
Clay	Madison (Alton Township only)
Clinton	Marion
Coles	Montgomery
Crawford	Richland
Cumberland	Shelby
Edwards	Wabash
Effingham	Washington
Fayette	Wayne
Greene	
Jasper	

Northern Zone—In the State of Illinois

Champaign	Menard
DeWitt	Morgan
Douglas	Moultrie
Edgar	Piatt
Logan	Sangamon
Macon	Vermilion
McLean	

Southern Zone—In the State of Illinois

Franklin	Perry
Hamilton	Randolph
Jackson	Saline
Madison (except Alton Township)	St. Clair
Monroe	White
	Williamson

In the State of Missouri

Bollinger	St. Francois
Cape Girardeau	St. Louis (City)
Crawford	St. Louis
Franklin	Ste. Genevieve
Jefferson	Warren
Perry	Washington
St. Charles	

4. Section 1032.3 is revised to read as follows:

§ 1032.3 Route disposition.

"Route disposition" means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility of a fluid milk product classified as Class I milk.

§ 1032.6 [Amended]

5. Section 1032.6 is amended by changing the word "moved" to "transferred".

6. In § 1032.7, the introductory text and paragraphs (a), (b) and (d)(2) are revised to read as follows:

§ 1032.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which:

(1) Route disposition, except filled milk, in the marketing area during the month is at least the lesser of a daily average of 7,000 pounds or 10 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to § 1032.13; and

(2) Total route disposition, except filled milk, is at least 50 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to § 1032.13 during the months of August through February and 40 percent during the other months.

(b) A supply plant from which during December at least 40 percent, and at least 50 percent in all other months, of the total receipts of milk from dairy farmers (including producer milk diverted from such plant pursuant to § 1032.13 but excluding milk diverted to such plant) and handlers described in § 1032.9(c) is transferred to and physically received at plants described in paragraph (a) of this section, except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk during each of the immediately preceding months of September through August and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered to and physically received at plants described in paragraph (a) of this section.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area covered by the other order than in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such plant's total route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its maintaining pool status under this order on the basis of the proviso of this paragraph;

* * * * *

7. Section 1032.13 is revised to read as follows:

§ 1032.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from a producer or a handler described in § 1032.9(c);

(b) Received by a handler described in § 1032.9(c) in excess of the quantity delivered to a pool plant(s);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1032.9 (a) or (b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion during the months of August through April unless such producer's milk is delivered to and physically received at a pool plant at least once during each such month;

(2) The total amount of milk diverted by a cooperative association during each of the months of September through November and January through April, shall not exceed 35 percent of the producer milk that such cooperative caused to be delivered to and diverted from pool plants in each such month and 45 percent of such producer milk deliveries and diversions by the cooperative in each of the months of August and December;

(3) The operator of a pool plant (other than a cooperative association) may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to (d)(2) of this section. The total amount of milk diverted during each of the months of September through November and January through April shall not exceed 35 percent of such plant operator's producer milk received at and diverted from such pool plant and 45 percent of such plant operator's producer milk receipts and diversions in each of the months of August and December;

(4) The quantity of milk diverted in excess of the applicable percentage limit prescribed in paragraph (d) (2) or (3) of this section shall not be producer milk. In such event, the handler diverting such milk may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, milk diverted on the last day of the month, then the next-to-last day of the month, and so on, shall be excluded until such exclusions cover the excess quantity;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to be a nonpool plant shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, milk diverted on the last day of the month, then the next-to-last day of the month, and so on, shall be excluded until such exclusions cover the excess quantity; and

(e) Milk diverted pursuant to paragraph (c) or (d) of this section shall be priced at the location of the plant to which diverted.

§ 1032.19 [Removed and Reserved]

8. Section 1032.19 is removed and reserved.

§ 1032.51 [Amended]

9. Section 1032.51 is amended by removing the last sentence.

10. In § 1032.52, the introductory text of paragraph (a) is amended by removing the word "pool" and paragraph (a)(2) is revised to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(2) For a plant located outside the marketing area but in any of the following territory the adjustment shall be as follows:

(i) *Minus 17 cents.* In counties of Adams, Brown, Cass, Pike, Schuyler and Scott in the State of Illinois or in the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(ii) *No adjustment.* In the State of Missouri south and east of Interstate Highway 44.

* * * * *

§ 1032.75 [Amended]

11. In § 1032.75, paragraph (a) is amended by removing the word "pool" in the two places it appears.

Signed at Washington, DC, on: March 21, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-6655 Filed 3-28-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1050

Milk in the Central Illinois Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends, for the months of March and April 1988, the limits on the amount of milk that may be moved directly from the farms of producers to nonpool plants for manufacturing and still be pooled and priced under the Central Illinois order. The action was requested by Prairie Farms Dairy, Inc., a cooperative association that represents producers who supply milk to the market. The action is necessary to assure the efficient disposition of an increasing supply of milk by producers who have been furnishing the market's fluid requirements.

EFFECTIVE DATE: March 29, 1988, for the months of March and April 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 19, 1988; published February 24, 1988 (53 FR 5386). The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers by promoting hauling efficiencies and tends to ensure that dairy farmers supplying the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Central Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 24, 1988 (53 FR 5386). Such notice invited comments on a proposal to suspend certain provisions of the order. Interested persons were given seven days after the publication of the notice in the **Federal Register** to comment on the proposal to suspend. No opposing views were received.

After consideration of all relevant material, including the proposal set forth in the notice and other available information, it is hereby found and determined that for the months of March

and April 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1050.13(d)(1), the words "During May, June and July".

In § 1050.13, paragraphs (d) (2), (3), (4) and (5) in their entirety

Statement of Consideration

This action suspends, for the months of March and April 1988, the limits on the amount of milk that may be diverted (moved directly from farms of producers to manufacturing plants) and still be pooled and priced under the Central Illinois order. Under the order a handler (cooperative association or pool plant operator) may not divert more days of an individual dairy farmer's milk production than is physically received at a pool plant during each such month. Also, the total quantity of milk diverted by such handler may not exceed 35 percent of the milk that the cooperative association or pool plant operator caused to be physically received at pool plants during the month.

The suspension was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that supplies milk for the market. Another cooperative association (Associated Milk Producers, Inc.), which also supplies milk for this market, supports the suspension. The action is needed to assure the efficient disposition of the market's increasing reserve milk supplies that must be processed into manufactured dairy products.

Prairie Farms presented data to support its suspension request. The information shows that during 1987 the Peoria distributing plant, operated by Prairie Farms, packaged 12 percent more milk than in 1986. However, the handler's receipts from dairy farmers who were associated with such plant during the last three months of 1987 were almost 20 percent above such receipts for the same three-month period of 1986. In addition, distant producers supplying milk to the Peoria distributing plant through a reload station at Preston, Iowa, are increasing production at a much greater rate than nearby producers.

A suspension of the diversion limitations for March and April is needed to enable the proponent cooperative and other handlers to dispose of their excess milk supplies in an orderly manner. Unless the diversion limits are suspended, Prairie Farms would have to receive the Iowa milk at its Peoria distributing plant and then reload the milk and transport it back to a manufacturing plant located near the area where the milk was produced to qualify such milk for pool participation. Such milk handling procedures would represent costly and inefficient marketing practices that can be avoided by a suspension of the diversion limitations as requested.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that such action promotes hauling efficiencies and ensures that dairy farmers who are supplying the market's fluid requirements will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were given an opportunity to file written data, views or arguments concerning this suspension. No views opposing this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for the months of March and April 1988.

List of Subjects in 7 CFR Part 1050

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of the Central Illinois order are hereby suspended for the months of March and April 1988.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1050 continues to read as follows:

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

§ 1050.13 [Amended]

2. In § 1050.13(d)(1), the words "During May, June and July" are suspended.

3. In § 1050.13, paragraphs (d) (2), (3), (4), and (5) are suspended in their entirety.

Signed at Washington, DC, on: March 21, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-6654 Filed 3-28-88; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. This rule will: (1) Permit CCC to charge a fee for voluntary warehouse examinations that are requested by a warehouseman; and (2) require that CCC publish in the **Federal Register** a Schedule of Contract Fees only when there is a change in the amount of annual contract fees to be collected. The provision of the proposed rule requiring bonding from warehousemen in any State where the State law does not guarantee every depositor a pro rata share of the commodities or proceeds from warehouse liquidation or bankruptcy is not adopted.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5647.

SUPPLEMENTARY INFORMATION: This rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not

applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, financial institution requirements, State warehousing laws, and federal contracting requirements during the past few years necessitate updating the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed.

A notice of proposed rulemaking was published by the Department in the **Federal Register** on October 8, 1987, 52 FR 37619, requesting comments with respect to proposals regarding changes in the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The comment period was for 30 days and expired on November 9, 1987.

Amendments to the regulations were proposed which would: (1) Require bonding from warehouseman in any State where the State law does not guarantee every depositor a pro rata share of the commodities or proceeds from warehouse liquidations or bankruptcy; (2) provide that CCC would charge a fee for voluntary examinations requested by a warehouseman; and (3) provide that CCC would publish in the **Federal Register** a Schedule of Contract Fees only when there is change in the amount of annual contract fees to be collected.

Several State warehouse licensing authorities expressed concern about the proposed rule and requested additional time to respond. Accordingly, a notice was published in the **Federal Register** on November 16, 1987, which extended the comment period for the proposed rule from November 9, 1987, to January 8, 1988. In addition, several State warehousing authorities requested that a meeting be held in Washington, DC, to permit them to further clarify and explain these comments and concerns. The Commodity Credit Corporation agreed and by a notice in the **Federal Register** (53 FR 2037) announced that the meeting would be held February 2, 1988, in the South Agriculture Building in Washington, DC. The comment period was reopened to February 12, 1988, (53 FR 2759) to allow further written comments to be submitted after the meeting.

Thirty comments were received concerning the proposed rule. All of the comments addressed the bonding provision with 29 of the commenters stating their opposition. These objections were as follows: States having indemnity funds believe that they afford CCC as much, and in some cases more, financial protection than the proposed bonding requirement. They pointed out that CCC now receives its full pro rata share of the grain or proceeds from the grain sold during warehouse liquidation. If the proceeds from the sale of the grain are not sufficient to cover all losses, payments are then made from the indemnity funds. They believe that payments from indemnity funds give greater financial protection to CCC than would the proposed bonding requirement. As stated by a number of commenters, one of the main reasons for establishing their indemnity fund was that warehouse bonds were becoming increasingly difficult to obtain. Comments received from State licensing authorities that do not have indemnity funds likewise opposed the proposed bonding requirement on grounds that their State laws provided each depositor its pro rata share. Most of those commenting indicated that it is difficult to obtain bonds since several surety companies no longer issue warehouse bonds. Warehousemen who commented also opposed the bonding proposal. They stated that the cost of warehouse bonds has increased significantly over the past few years, and the bonding provision, if adopted, would impose additional financial hardships on the warehouseman.

One comment from the State of Missouri favored the proposed rule stating that limits on the amount paid for claims under the State indemnity funds jeopardize the integrity of warehouse receipts, which for years have provided a basis for financing the industry.

A meeting was held in Washington, DC, on February 2, 1988, to permit representatives from States with indemnity funds to further explain their objections and concerns over the bonding provision. Objections to the bonding provisions which were voiced were similar to the objections in the written comments. Representatives from several States stated that their indemnity fund adequately protected CCC during warehouse bankruptcies and liquidations. Iowa State officials pointed out that since the enactment of their indemnity fund, 14 warehouses have been liquidated. In each case, CCC has received payment for 100 percent of the loss.

The CCC has carefully reviewed the comments received and the case histories of recent bankruptcies in States where CCC could be at risk of not receiving its full pro rata share of the proceeds in the event of a warehouse bankruptcy and liquidation. It appears at the present time that CCC is adequately protected under most State indemnity funds and State laws in cases involving warehouse bankruptcies and liquidations. In the one State where CCC is not protected by payment from the indemnity fund (Oklahoma) the fund is financed by a fee from every depositor of grain in the warehouse. CCC does not pay the fee. However, CCC is protected by bonds under the Oklahoma State Warehouse Act. Accordingly, the bonding provision will not be adopted in the final rule.

No comments were received concerning the provision that CCC would charge a fee for voluntary examinations requested by the warehousemen and changes in the procedure for publishing a Schedule of Contract Fees in the **Federal Register**.

These provisions will be adopted in the final rule.

List of Subjects in 7 CFR Part 1421

Grain, Loan programs, Agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Final Rule

Accordingly, 7 CFR Part 1421 is amended as follows:

PART 1421—[AMENDED]

1. The authority citation for 7 CFR Part 1421, *Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed* continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 [15 U.S.C 714b and 714c]; secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended, 1054, as amended [7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425]; secs. 101A, 105C, and 107D of Pub. L. 99-198, unless otherwise noted.

2. In § 1421.5558, a new paragraph (a)(4) is added and paragraph (b) is revised to read as follows:

§ 1421.5558 Contract and application and inspection fees.

(a) * * *

(4) CCC may, upon the request of a warehouseman, conduct an examination of a warehouse for the sole benefit of the warehouseman and such warehouseman shall pay to CCC a fee equal to 1½ times the amount of the warehouseman's annual contract fee for such examination.

(b) Any subsequent changes in the contract and application fees shall be announced in the **Federal Register.**

Signed at Washington, DC, on March 23, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-6789 Filed 3-28-88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 210, and 242

[INS No. 1101-88]

Powers and Duties of Service Officers Special Agricultural Workers Appeals

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: On December 22, 1987, the President signed into law a bill containing an amendment to the provisions of section 210 of the Immigration and Nationality Act (INA). Section 210 of the INA was established by Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA). This rule implements the new amendment to section 210 by deleting the entry cut-off date for eligibility to file applications under section 210 in the United States; and establishing standards and procedures for processing "preliminary applications" at designated ports of entry on the southern land border. This rule also clarifies and makes various grammatical and technical amendments to the regulations governing the Special Agricultural Worker Program including changes necessitated by the new amendment to section 210. The rule defines the term "preliminary application"; deletes the limitation on the authority of District Directors to deny applications at legalization offices; deletes the filing date requirement for eligible aliens apprehended prior to the application period; clarifies the provision concerning where appeals under Part 210 are to be filed; deletes the references to issuance of an Order to Show Cause and Warrant of Arrest in cases where the United States Attorney declines prosecution; clarifies the provision requiring notification of decisions to the applicant's representative; confirms that Special Agricultural Worker (SAW) applicants are permitted to travel outside the United States and reenter upon the presentation of a valid unexpired Form I-688A; provides for eligible applicants to be issued the Temporary Resident Card at any Legalization Office; and, deletes the provisions relating to the transitional admission standard.

DATES: The interim final rule is effective March 29, 1988. Comments must be received on or before April 28, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Special Agricultural Worker Program, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin (Deputy Assistant Commissioner, Special Agricultural Workers (SAW)) (202) 786-3658.

SUPPLEMENTARY INFORMATION: Section 103.1(n)(2) has been amended to remove the restriction on the authority of district directors to deny applications at legalization offices. The Service has found that limiting local denial authority to cases in which the applicant is statutorily ineligible or admits fraud has resulted in the issuance of employment authorization to applicants who are clearly ineligible.

Since application fees are not refundable, it is the policy of the Service to screen applications before the fee is taken and to advise applicants who are clearly ineligible of that fact. However, every person who wishes to file an application may do so and if after that advice the applicant wishes to file, the application is taken. Unless the application is denied at the legalization office it is forwarded to a Regional Processing Facility for adjudication. To speed determinations on frivolous applications district directors will now have the authority to adjudicate and deny an application at the legalization office when the applicant is determined to be ineligible. Such applicants will be advised of the right to appeal the decision but employment authorization will not be issued.

Section 210.1 is amended to add the term "preliminary application" as that term is defined in the December 22, 1987 amendment to section 210 of the Immigration and Nationality Act.

Section 210.1(d) is amended to delete the reference to issuance of an Order to Show Cause and Warrant of Arrest in cases where the United States Attorney has declined to prosecute an individual for false statements in the application process. The Service after a careful further review of the confidentiality provisions of IRCA has determined that the information furnished pursuant to an application under section 210 or 245a may not be used to institute deportation proceedings. There are only two uses for the information obtained during the application process: To process the application or to prosecute an applicant who has made false statements.

Section 210.1(n) is redesignated § 210.1(o) and is amended to delete the note regarding publication by the Immigration and Naturalization Service (INS) of the Department of Agriculture's definition of "seasonal agricultural services". On June 1, 1987, the Department of Agriculture issued a final rule at 7 CFR 1d.9 defining terms used in the statutory definition of "seasonal agricultural services". Since this rule has been widely disseminated, there is no need to reprint those definitions in this part.

Sections 210.2(b)(2) and 210.3(d)(2) and a portion of § 210.2(a)(1) are

deleted. These provisions required that an alien who, subsequent to the enactment of IRCA on November 6, 1986, and prior to the beginning of the application period on June 1, 1987, was apprehended and released from Service custody based on a nonfrivolous claim to SAW eligibility must file an application during the first 30 days of the application period, and that those who did not do so would be ineligible to file for temporary resident status in the United States. The Service after a careful review of these provisions has determined that section 210(d)(1) of the Immigration and Nationality Act provides for a stay of exclusion and deportation with work authorization for such aliens through the first thirty days of the application period, but does not require a deadline for filing. Any such alien who has not filed a nonfrivolous application is, after June 30, 1987, subject to issuance of an order to show cause and warrant of arrest or to the execution of any outstanding warrant of arrest or order of deportation. Failure to file an application by July 1, 1987, however, does not render the alien ineligible to apply for SAW status either in the United States or overseas.

Section 210.2(c)(1) deletes the reference to the transitional admission standard and deletes reference to the June 26, 1987, entry cut-off date. The reference to the transitional admission standard is removed because the temporary transitional procedures authorized at section 210.6 terminated on November 1, 1987. Reference to the June 26, 1987, entry cut-off date has been deleted in order to conform with the recent amendment to section 210 which provides that any alien may file a nonfrivolous application as defined in section 210.1(j) in the United States at any time during the application period which ends on November 30, 1988.

Section 210.2(c)(2)(iii) is clarified by deletion of the last sentence relative to the applicant's scheduled appearance at a legalization office. INS is removing this sentence because the first sentence of the following § 210.2(c)(2)(iv) describes in sufficient detail the applicant's required appearance at a legalization office.

Section 210.2(c)(4) is added to establish procedures for processing preliminary applications at designated ports of entry. On December 22, 1987, the President signed into law a bill containing an amendment to the provisions of section 210 of the INA which provides for the admission of SAW applicants who present preliminary applications at designated ports of entry on the southern land border. Application fees for border processing applications are required to be submitted in United States currency. The ports of entry at Calexico, California, Otay Mesa, California, and Laredo, Texas have been designated to conduct preliminary application processing. Additional ports of entry may be so designated dependent upon applicant response and the availability of resources. The amendment also provides that any alien in the United States who has not filed a nonfrivolous application or who has failed to enter through a designated port of entry as provided in § 210.2(c)(4), shall be subject to deportation and removal as provided by the INA.

Section 210.2(c)(4)(i) sets the admission standard for preliminary SAW applicants. A SAW application completely filled out and signed must be presented with the required fee and photographs. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

Section 210.2(c)(4)(ii) establishes procedures for processing preliminary applications. An application fee will not be accepted until a determination has been made that the alien is admissible as a SAW applicant.

Section 210.2(c)(4)(iii) provides that a preliminary applicant may be admitted to the United States for a period of ninety days with employment authorization. During this period the applicant is expected to gather evidence of eligibility, complete a medical examination, and submit a complete application to a legalization office. An extension of the ninety-day admission period may be authorized by a district director upon a showing of good cause by the applicant. The original Form I–700 SAW application will be returned to the applicant to be presented to a legalization office. A preliminary application is subject to denial for lack of prosecution if the applicant fails to submit a complete application to a legalization office within the ninety-day admission period or any extension thereof.

Section 210.2(e)(4) is amended to delete the reference to the issuance of an Order to Show Cause and Warrant of Arrest in cases where the United States Attorney declines prosecution. See the discussion of section § 210.1(d) above.

Section 210.2(f) is clarified with respect to notification of decisions to an applicant's representative and to provide more specific information as to the filing of appeals under Part 210. The mention of qualified designated entities in the last sentence of this section was only meant to indicate the possibility of formal representation by a qualified designated entity under the provisions of 8 CFR Part 292. It has been misinterpreted to imply, that any qualified designated entity who assisted an applicant with preparation of the application was entitled to receive notification of decisions. Representation in immigration proceedings is governed by regulations at 8 CFR Part 292 and it was not the intent of the Service to waive these requirements in § 210.2(f).

Section 210.3(b)(3) is amended by removing the words "Affidavits and other" from the first sentence. It is not necessary to specify affidavits as a form of personal testimony by an applicant and the inclusion of that term here has been misinterpreted.

Section 210.3(d)(2) is removed for the reasons given in the discussion of § 210.2(b)(2), and § 210.3(d)(3) is redesignated as § 210.3(d)(2).

Section 210.4 is amended at the title by changing the word "of" to "and".

Section 210.4(b)(2) is amended to provide for issuance of Employment Authorization Form I–688A to certain nonimmigrant aliens who apply for special agricultural worker (SAW) status upon expiration of their previously issued work authorization. The heading and fourth sentence is also amended by adding the term "and travel" before the word "authorization".

Section 210(a)(1) of the Immigration and Nationality Act provides that the Attorney General shall grant authorization to engage in employment in the United States and provide an employment authorized endorsement or other appropriate work permit to an alien who presents a nonfrivolous application for adjustment of status during the application period. Because some SAW-eligible applicants will have already been authorized employment incident to their admission as nonimmigrants, those applicants will have already received an appropriate work permit as directed by the statute. This class of aliens is identified at § 274a.12(b) and includes (H–1, H–2A, H–2B, H–3) temporary workers or trainees and (L–1) intra-company transferees. In establishing these classifications, Congress intended aliens to be admitted for specific employment purposes; therefore, applicants who apply for SAW status who currently have work authorization incident to their current status shall be granted work authorization by INS effective the date the alien's prior work authorization

expires. This section has also been amended to clarify that a valid Form I-688A may be used as an entry document for applicants under this section.

Section 210.4(b)(3) is amended to allow for issuance of the Temporary Resident Card by any legalization office in cases where the applicant relocates after the temporary residence interview date but prior to issuance of the Temporary Resident Card.

Section 210.6, Temporary Transitional Procedures has been deleted in its entirety since those procedures were terminated on November 1, 1987, as scheduled and are no longer in effect.

Finally, § 242.21(b) is amended by removing the reference to prohibit appeals by special agricultural workers who failed to submit an application prior to July 1, 1987. See the discussion of § 210.2(b)(2).

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of § 1(b) of E.O. 12291.

This rule contains information collection requirements which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 210

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

8 CFR Part 242

Administrative practice and procedure, Deportation proceedings.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301—1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; EO 12356; 3 CFR 1982 Comp., p. 166.

§ 103.1 [Amended]

2. Section 103.1(n)(2) is amended by inserting a period after the word "jurisdiction" in the last sentence of the paragraph and removing the remaining language.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1252, 1254, 1362; E.O. 12356; Title 1 of Pub. L. 95-145; 100 Stat. 3359.

§ 242.21 [Amended]

4. Section 242.21(b) is amended by removing from the heading the term "special agricultural worker", and by removing from the first sentence the citation "210.2(d)(3) or".

5. Part 210 is revised to read as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

Sec.

210.1 Definition of terms used in this part.
210.2 Application for temporary resident status.
210.3 Eligibility.
210.4 Status and benefits.
210.5 Adjustment to permanent resident status.

Authority: Pub. L. 99-603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 210.1 Definition of terms used in this part.

(a) *Act.* The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(b) *Application period.* The 18-month period during which an application for adjustment of status to that of a temporary resident may be accepted, begins on June 1, 1987, and ends on November 30, 1988.

(c) *Complete application.* A complete application consists of an executed Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, evidence of qualifying agricultural employment and residence, a report of medical examination, and the prescribed number of photographs. An application is not complete until the required fee has been paid and recorded.

(d) *Determination process.* Determination process as used in this part means reviewing and evaluating all information provided pursuant to an application for the benefit sought and making a determination thereon. If fraud, willful misrepresentation of a material fact, a false writing or document, or any other activity prohibited by section 210(b)(7) of the Act is discovered during the determination process the Service shall refer the case to a U.S. Attorney for possible prosecution.

(e) *Family unity.* The term "family unity" as used in section 210(c)(2)(B)(i) of the Act means maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children who are not members of some other household, and parents who reside regularly in the household of the family group.

(f) *Group 1.* Special agricultural workers who have performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending on May 1, 1984, 1985, and 1986, and who have resided in the United States for six months in the aggregate in each of those twelve-month periods.

(g) *Group 2.* Special agricultural workers who during the twelve-month period ending on May 1, 1986 have performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States.

(h) *Legalization Office.* Legalization offices are local offices of the Immigration and Naturalization Service which accept and process applications for legalization or special agricultural worker status, under the authority of the district directors in whose districts such offices are located.

(i) *Man-day.* The term "man-day" means the performance during any day of not less than one hour of qualifying agricultural employment for wages paid. If employment records relating to an alien applicant show only piece rate units completed, then any day in which piece rate work was performed shall be counted as a man-day. Work for more than one employer in a single day shall be counted as no more than one man-day for the purposes of this part.

(j) *Nonfrivolous application.* A complete application will be determined to be nonfrivolous at the time the applicant appears for an interview at a legalization or overseas processing office if it contains:

(1) Evidence or information which shows on its face that the applicant is admissible to the United States or, if inadmissible, that the applicable grounds of excludability may be waived under the provisions of section 210(c)(2)(i) of the Act,

(2) Evidence or information which shows on its face that the applicant performed at least 90 man-days of

qualifying employment in seasonal agricultural services during the twelve-month period from May 1, 1985 through May 1, 1986, and

(3) Documentation which establishes a reasonable inference of the performance of the seasonal agricultural services claimed by the applicant.

(k) *Overseas processing office.* Overseas processing offices are offices outside the United States at which applications for adjustment to temporary resident status as a special agricultural worker are received, processed, referred to the Service for adjudication or denied. The Secretary of State has designated for this purpose the United States Embassy at Mexico City, and in all other countries the immigrant visa issuing of office at which the alien, if an applicant for an immigrant visa, would make such application. Consular officers assigned to such offices are authorized to recommend approval of an application for special agricultural worker status to the Service if the alien establishes eligibility for approval and to deny such an application if the alien fails to establish eligibility for approval or is found to have committed fraud or misrepresented facts in the application process.

(l) *Preliminary application.* A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States, and identifies documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

(m) *Public cash assistance.* Public cash assistance means income or needs-based monetary assistance. This includes but is not limited to supplemental security income received by the alien or his immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(n) *Qualified designated entity.* A qualified designated entity is any state, local, church, community, or voluntary agency, farm labor organization, association of agricultural employers or individual designated by the Service to assist aliens in the preparation of applications for Legalization and/or Special Agricultural Worker status.

(o) *Qualifying agricultural employment.* Qualifying agricultural employment means the performance of "seasonal agricultural services" described at section 210(h) of the Act as that term is defined in regulations by the Secretary of Agriculture at 7 CFR Part 1d.

(p) *Regional processing facility.* Regional Processing Facilities are Service offices established in each of the four Service regions to adjudicate, under the authority of the Directors of the Regional Processing Facilities, applications for adjustment of status under sections 210 and 245a of the Act.

(q) *Service.* The Immigration and Naturalization Service (INS).

(r) *Special agricultural worker.* Any individual granted temporary resident status in the Group 1 or Group 2 classification or permanent resident status under section 210(a) of the Act.

§ 210.2 Application for temporary resident status.

(a)(1) *Application for temporary resident status.* An alien agricultural worker who believes that he or she is eligible for adjustment of status under the provisions of § 210.3 of this part may file an application for such adjustment at a qualified designated entity, at a legalization office, or at an overseas processing office outside the United States. Such application must be filed within the application period.

(2) *Application for Group 1 status.* An alien who believes that he or she qualifies for Group 1 status as defined in § 210.1(f) of this part and who desires to apply for that classification must so endorse his or her application at the time of filing. Applications not so endorsed will be regarded as applications for Group 2 status as defined in § 210.1(g) of this part.

(3) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful temporary or permanent resident status under section 210 of the Act. No more than 350,000 aliens may be granted temporary resident status in the Group 1 classification. If more than 350,000 aliens are determined to be eligible for Group 1 classification, the first 350,000 applicants (in chronological order by date the application is filed at a legalization or overseas processing office) whose applications are approved for Group 1 status shall be accorded that classification. Aliens admitted to the United States under the transitional admission standard placed in effect between July 1, 1987, and November 1, 1987, and under the preliminary application standard at § 210.2(c)(4) who claim eligibility for Group 1 classification shall be registered as applicants for that classification on the date of submission to a legalization office of a complete application as defined in § 210.1(c) of this part. Other applicants who may be eligible for Group 1 classification shall be classified as Group 2 aliens. There is no limitation on the number of aliens whose resident status may be adjusted from temporary to permanent in Group 2 classification.

(b) *Filing date of application*—(1) *General.* The date the alien submits an application to a qualified designated entity, legalization office or overseas processing office shall be considered the filing date of the application, provided that in the case of an application filed at a qualified designated entity the alien has consented to have the entity forward the application to a legalization office. Qualified designated entities are required to forward completed applications to the appropriate legalization office within 60 days after the applicant gives consent for such forwarding.

(c) *Filing of application*—(1) *General.* The application must be filed on Form I-700 at a qualified designated entity, at a legalization office, at a designated port of entry, or at an overseas processing office within the eighteen-month period beginning on June 1, 1987 and ending on November 30, 1988.

(2) *Applications in the United States.* (i) The application must be filed on Form I-700 with the required fee and, if the applicant is 14 years or older, the application must be accompanied by a completed Form FD-258 (Fingerprint Card).

(ii) All fees for applications filed in the United States, other than those within the provisions of § 210.2(c)(4), must be submitted in the exact amount in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(iii) In the case of an application filed at a legalization office, including an application received from a qualified designated entity, the district director may, at his or her discretion, require filing either by mail or in person, or may permit filing in either manner.

(iv) Each applicant, regardless of age, must appear at the appropriate Service legalization office and must be fingerprinted for the purpose of issuance of Form I–688A. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived when it is impractical because of the health of the applicant.

(3) *Filing at overseas processing offices.* (i) The application must be filed on Form I–700 and must include a completed State Department Form OF–179 (Biographic Data for Visa Purposes).

(ii) Every applicant must appear at the appropriate overseas processing office to be interviewed by a consular officer. The overseas processing office will inform each applicant of the date and time of the interview. At the time of the interview every applicant shall submit the required fee.

(iii) All fees for applications submitted to an overseas processing office shall be submitted in United States currency, or in the currency of the country in which the overseas processing office is located. Fees will not be waived or refunded under any circumstances.

(iv) An applicant at an overseas processing office whose application is recommended for approval shall be provided with an entry document attached to the applicant's file. Upon admission to the United States, the applicant shall proceed to a legalization office for presentation or completion of Form FD–258 (Fingerprint Card), presentation of the applicant's file and issuance of the employment authorization Form I–688A.

(4) *Border processing.* The Commissioner will designate specific ports of entry located on the southern land border to accept and process applications under this part. Ports of entry so designated will process preliminary applications as defined at § 210.1(l) under the authority of the district directors in whose districts they are located. The ports of entry at Calexico, California, Otay Mesa, California, and Laredo, Texas have been designated to conduct preliminary application processing. Designated ports of entry may be closed or added at the discretion of the Commissioner.

(i) *Admission standard.* The applicant must present a fully completed and signed Form I–700, Application for Temporary Resident Status with the required fee and photographs at a designated port of entry. The application must contain specific information concerning the performance of qualifying employment in the United States and identify documentary evidence which the applicant intends to submit as proof of such employment. The applicant must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agricultural worker classification is credible, and that he or she is otherwise admissible to the United States under the provisions of § 210.3(e) of this part including, if required, approval of an application for waiver of grounds of excludability.

(ii) *Procedures.* The fee for any application under this paragraph including applications for waivers of grounds of excludability, must be submitted in United States currency. Application fees shall not be collected until the examining immigration officer has determined that the applicant has presented a preliminary application and is admissible to the United States including, if required, approval of an application for waiver of grounds of excludability as provided in this paragraph. Applicants at designated ports of entry must present proof of identity in the form of a valid passport, a "cartilla" (Mexican military service registration booklet), a Form 13 ("Forma trece"—Mexican lieu passport identity document), or a certified copy of a birth certificate accompanied by additional evidence of identity bearing a photograph and/or fingerprint of the applicant. Upon a determination by an immigration officer at a designated port of entry that an applicant has presented a preliminary application, the applicant shall be admitted to the United States as an applicant for special agricultural worker status. All preliminary applicants shall be considered as prospective applicants for the Group 2 classification. However, such applicants may later submit a complete application for either the Group 1 or Group 2 classification to a legalization office. Preliminary applicants are not required to pay the application fee a second time when submitting the complete application to a legalization office.

(iii) *Conditions of admission.* Aliens who present a preliminary application shall be admitted to the United States for a period of ninety (90) days with authorization to accept employment, if they are determined by an immigration officer to be admissible to the United States. Such aliens are required, within that ninety-day period, to submit evidence of eligibility which meets the provisions of § 210.3 of this part; to complete Form FD–258 (Fingerprint Card); to obtain a report of medical examination in accordance with § 210.2(d) of this part; and to submit to a legalization office a complete application as defined at § 210.1(c) of this part. A district director may, for good cause, extend the ninety-day period and grant further authorization to accept employment in the United States if an alien demonstrates he or she was unable to perfect an application within the initial period. If an alien described in this paragraph fails to submit a complete application to a legalization office within ninety days or within such additional period as may have been authorized, his or her application may be denied for lack of prosecution, without prejudice.

(iv) Deportation is not stayed for an alien subject to deportation and removal under the INA, notwithstanding a claim to eligibility for SAW status, unless that alien has filed a nonfrivolous application.

(d) *Medical examination.* An applicant under this part must be examined at no expense to the government by a designated civil surgeon or, in the case of an applicant abroad, by a physician or clinic designated to perform medical examinations of immigrant visa applicants. The medical report setting forth the findings concerning the mental and physical condition of the applicant shall be incorporated into the record. Any applicant certified under paragraph (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(e) *Limitation on access to information and confidentiality.* (1) Except for consular officials engaged in the processing of applications overseas and employees of a qualified designated entity where an application is filed with that entity, no person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, or contract personnel employed by the Service to work in connection with the legalization program, will be permitted to examine individual applications.

(2) Files and records prepared by qualified designated entities under this section are confidential. The Attorney General and the Service shall not have access to these files and records without the consent of the alien.

(3) All information furnished pursuant to an application for temporary resident status under this part including documentary evidence filed with the application shall be used only in the determination process or to enforce the provisions of section 210(b)(7) of the Act, relating to prosecutions for fraud and false statements made in connection with applications, as

provided in paragraph (e)(4) of this section.

(4) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 210(b)(7) of the Act, the Service shall refer the matter to the U.S. Attorney for prosecution of the alien or any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(f) *Decision.* The applicant shall be notified in writing of the decision and, if the application is denied, of the reason(s) therefor. An adverse decision under this part including an overseas application may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) on Form I-694. The appeal with the required fee shall be filed with the Regional Processing Facility in accordance with the provisions of § 103.3(a)(2) of this chapter. An applicant for Group 1 status as defined in § 210.1(f) of this part who is determined to be ineligible for that status may be classified as a temporary resident under Group 2 as defined in § 210.1(g) of this part if otherwise eligible for Group 2 status. In such a case the applicant shall be notified of the decision to accord him or her Group 2 status and to deny Group 1 status. He or she is entitled to file an appeal in accordance with the provisions of § 103.3(a)(2) of this chapter from that portion of the decision denying Group 1 status. In the case of an applicant who is represented in the application process in accordance with 8 CFR Part 292, the applicant's representative shall also receive notification of decision specified in this section.

(g) *Motions.* In accordance with the provisions of § 103.5(b) of this chapter, the director of a regional processing facility or a consular officer at an overseas processing office may *sua sponte* reopen any proceeding under this part under his or her jurisdiction and reverse any adverse decision in such proceeding when appeal is taken under § 103.3(a)(2) of this part from such adverse decision; the Associate Commissioner, Examinations, and the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that unit under this part and reconsider any decision rendered in such proceeding. The decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(h) *Certifications.* The regional processing facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations when the case involves an unusually complex or novel question of law or fact. A consular officer assigned to an overseas processing office is authorized to certify a decision in the same manner and upon the same basis.

§ 210.3 Eligibility.

(a) *General.* An alien who, during the twelve-month period ending on May 1, 1986, has engaged in qualifying agricultural employment in the United States for at least 90 man-days is eligible for status as an alien lawfully admitted for temporary residence if otherwise admissible under the provisions of section 210(c) of the Act and if he or she is not ineligible under the provisions of paragraph (d) of this section.

(b) *Proof of eligibility*—(1) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States under the provisions of section 210(c) of the Act, is otherwise eligible for adjustment of status under this section and in the case of a Group 1 applicant, has resided in the United States for the requisite periods. If the applicant cannot provide documentation which shows qualifying employment for each of the requisite man-days, or in the case of a Group 1 applicant, which meets the residence requirement, the applicant may meet his or her burden of proof by providing documentation sufficient to establish the requisite employment or residence as a matter of just and reasonable inference. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraphs (b) (2) and (3) of this section. If an applicant establishes that he or she has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable.

(2) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Original documents will be given greater weight than copies. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. Analysis of evidence submitted will include consideration of the fact that work performed by minors and spouses is sometimes credited to a principal member of a family.

(3) *Verification.* Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony of persons other than the applicant) will not serve to meet an applicant's burden of proof. All evidence of identity, qualifying employment, admissibility, and eligibility submitted by an applicant for adjustment of status under this part will be subject to verification by the Service. Failure by an applicant to release information protected by the Privacy Act or related laws when such information is essential to the proper adjudication of an application may result in denial of the benefit sought. The Service may solicit from agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment, lists of workers against which evidence of qualifying employment can be checked. If such corroborating evidence is not available and the evidence provided is deemed insufficient, the application may be denied.

(c) *Documents.* A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with requirements specified in this part. At the time of filing, certified copies of documents may be submitted in lieu of originals. However, at the time of the interview, wherever possible, the original documents must be presented except for the following: Official government records; employment or employment related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained

by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director or consular officer, original documents, even if accompanied by certified copies, may be temporarily retained for further examination.

(1) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(i) Passport;

(ii) Birth certificate;

(iii) Any national identity document from a foreign country bearing a photo and/or fingerprint (e.g., "cedula", "cartilla", "carte d'identite," etc.);

(iv) Driver's license or similar document issued by a state if it contains a photo;

(v) Baptismal record or marriage certificate;

(vi) Affidavits, or

(vii) Such other documentation which may establish the identity of the applicant.

(2) *Assumed names*—(i) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name.

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail.

(3) *Proof of employment.* The applicant may establish qualifying employment through government employment records, or records maintained by agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment, or such other evidence as worker identification issued by employers or collective bargaining organizations, union membership cards or other union records such as dues receipts or records of the applicant's involvement or that of his or her immediate family with organizations providing services to farmworkers, or work records such as pay stubs, piece work receipts, W–2 Forms or certification of the filing of Federal income tax returns on IRS Form 6166, or state verification of the filing of state income tax returns. Affidavits may be submitted under oath, by agricultural producers, foremen, farm labor contractors, union officials, fellow employees, or other persons with specific knowledge of the applicant's employment. The affiant must be identified by name and address; the name of the applicant and the relationship of the affiant to the applicant must be stated; and the source of the information in the affidavit (e.g. personal knowledge, reliance on information provided by others, etc.) must be indicated. The affidavit must also provide information regarding the crop and the type of work performed by the applicant and the period during which such work was performed. The affiant must provide a certified copy of corroborating records or state the affiant's willingness to personally verify the information provided. The weight and probative value of any affidavit accepted will be determined on the basis of the substance of the affidavit and any documents which may be affixed thereto which may corroborate the information provided.

(4) *Proof of residence.* Evidence to establish residence in the United States during the requisite period(s) includes: Employment records as described in paragraph (c)(3) of this section; utility bills (gas, electric, phone, etc.), receipts, or letters from companies showing the dates during which the applicant received service; school records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing the name of school, name and, if available, address of student, and periods of attendance, and hospital or medical records showing similar information; attestations by churches, unions, or other organizations to the applicant's residence by letter which: Identify applicant by name, are signed by an official (whose title is shown), show inclusive dates of membership, state the address where applicant resided during the membership period, include the seal of the organization impressed on the letter, establish how the author knows the applicant, and the origin of the information; and additional documents that could show that the applicant was in the United States at a specific time, such as: Money order receipts for money sent out of the country; passport entries; birth certificates of children born in the United States; bank books with dated transactions; letters of correspondence between the applicant and another person or organization; Social Security card; Selective Service card; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, contracts to which applicant has been a party; tax receipts; insurance policies, receipts, or letters; and any other document that will show that applicant was in the United States at a specific time. For Group 2 eligibility, evidence of performance of the required 90 man-days of seasonal agricultural services shall constitute evidence of qualifying residence.

(5) *Proof of financial responsibility.* Generally, the evidence of employment submitted under paragraph (c)(3) of this section will serve to demonstrate the alien's financial responsibility. If it appears that the applicant may be inadmissible under section 212(a)(15) of the Act, he or she may be required to submit documentation showing a history of employment without reliance on public cash assistance for all periods of residence in the United States.

(d) *Ineligible classes.* The following classes of aliens are ineligible for temporary residence under this part:

(1) An alien who at any time was a nonimmigrant exchange visitor under section 101(a)(15)(J) of the Act who is subject to the two-year foreign residence requirement unless the alien has complied with that requirement or the requirement has been waived pursuant to the provisions of section 212(e) of the Act;

(2) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived, pursuant to section 210(c)(2)(B)(ii) of the Act.

(e) *Exclusion grounds*—(1) *Grounds of exclusion not to be applied.* Section (14), (20), (21), (25), and (32) of section 212(a) of the Act shall not apply to applicants applying for temporary resident status.

(2) *Waiver of grounds for exclusion.* Except as provided in paragraph (e)(3) of this section, the Service may waive any other provision of section 212(a) of the Act only in the case of individual

aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I-690. When an application for waiver of grounds of excludability is submitted in conjunction with an application for temporary residence under this section, it shall be accepted for processing at the legalization office, overseas processing office, or designated port of entry. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the legalization office it shall be forwarded to the appropriate regional processing facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States other than those within the provisions of § 210.2(c)(4) must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees for waiver applications filed at the designated port of entry under the preliminary application standard must be submitted in United States currency. Fees will not be waived or refunded under any circumstances. Generally, an application for waiver of grounds of excludability under this part submitted at a legalization office or overseas processing office will be approved or denied by the director of the regional processing facility in whose jurisdiction the applicant's application for adjustment of status was filed. However, in cases involving clear statutory ineligibility or admitted fraud, such application for a waiver may be denied by the district director in whose jurisdiction the application is filed; in cases filed at overseas processing offices, such application for a waiver may be denied by a consular officer; or, in cases returned to a legalization office for reinterview, such application may be approved at the discretion of the district director. Waiver applications filed at the port of entry under the preliminary application standard will be approved or denied by the district director having jurisdiction over the port of entry. The applicant shall be notified of the decision and, if the application is denied, of the reason(s) therefor. The applicant may appeal the decision within 30 days after the service of the notice pursuant to the provisions of § 103.3(a)(2) of this chapter.

(3) *Grounds of exclusion that may not be waived.* The following provisions of section 212(a) of the Act may not be waived:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except as provided in paragraph (c)(4) of this section.

(iii) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana.

(iv) Paragraphs (27), (prejudicial to the public interest), (28), (communists), and (29) (subversive);

(v) Paragraph (33) (nazi persecution).

(4) *Special Rule for determination of public charge.* An applicant who has a consistent employment history which shows the ability to support himself and his or her family, even though his income may be below the poverty level, is not excludable under paragraph (e)(3)(ii) of this section. The applicant's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the applicant shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without reliance on public cash assistance. This regulation is prospective in that the Service shall determine, based on the applicant's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

§ 210.4 Status and benefits.

(a) *Date of adjustment.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date on which the fee was paid at a legalization office, except that the status of an alien who applied for such status at an overseas processing office whose application has been recommended for approval by that office shall be adjusted as of the date of his or her admission into the United States.

(b) *Employment and travel authorization*—(1) *General.* Authorization for employment and travel abroad for temporary resident status applicants under section 210 of the Act may only be granted by a Service legalization office. In the case of an application which has been filed with a qualified designated entity, employment authorization may only be granted after a nonfrivolous application has been received at a legalization office, and receipt of the fee has been recorded.

(2) *Employment and travel authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant, after an interview has been conducted in connection with a nonfrivolous application at a legalization office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a legalization office, authorization to accept employment will be granted valid to the scheduled appointment date. The appointnent letter will be endorsed with the temporary employment authorization. Employment and travel authorization subsequent to an interview will be granted on Service Form I-688A, and will be restricted to six months duration, pending final determination on the application for temporary resident status. If a final determination has not been made on the application prior to the expiration date of the I-688A, that date may be extended upon return of the I-688A by the applicant to the legalization office where it was obtained. Applications submitted under this part by persons who currently have work authorization incident to status as identified at § 274a.12(b) shall be granted work authorization by INS effective the date the alien's prior work authorization expires.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the Regional Processing Facility will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any legalization office, and upon surrender of the previously issued Form I-688A will be issued Form I-688, Temporary Resident Card. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted for permanent residence.

(c) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary

resident under section 210 of the Act is not entitled to submit a petition pursuant to section 203(a)(2) of the Act or to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence, except as provided in paragraph (b)(3) of this section.

(d) *Termination of temporary resident status*—(1) *General.* The temporary resident status of a special agricultural worker is terminated automatically and without notice under section 210(a)(3) of the Act upon entry of a final order of deportation by an immigration judge based on a determination that the alien is deportable under section 241 of the Act.

(2) *Surrender of Form I-688.* An alien whose status as a temporary resident has been terminated under this section shall, upon demand, promptly surrender Form I-688, Temporary Resident Card, to the district director having jurisdiction over the alien's place of residence or, in the case of a commuter, employment.

§ 210.5 Adjustment to permanent resident status.

(a) *Eligibility and date of adjustment to permanent resident status.* The status of an alien lawfully admitted to the United States for temporary residence under section 210(a)(1) of the Act, if the alien has otherwise maintained such status as required by the Act, shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence as of the following dates:

(1) *Group 1.* Aliens determined to be eligible for Group 1 classification, whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1989. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence one year from the date of the adjustment to temporary residence.

(2) *Group 2.* Aliens determined to be eligible for Group 2 classification whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1990. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence two years from the date of the adjustment to temporary residence.

(b) *Maintenance of temporary resident status; ADIT processing*—(1) *General.* Before the status of an alien lawfully admitted for temporary residence under section 210(a)(1) of the Act can be adjusted to that of an alien lawfully admitted for permanent residence, the alien must appear at a legalization office or such other Service office as is designated for this purpose for a determination that he or she has maintained temporary resident status, and for completion of processing for issuance of Form I-551, Alien Registration Receipt Card.

(2) *Maintenance of status.* Information provided by the alien concerning his or her maintenance of status will be subject to Service verification. The status of an alien described in paragraph (b)(1) of this section who has maintained temporary resident status will be adjusted to that of an alien lawfully admitted for permanent residence effective on the date appropriate for his or her group as provided in paragraph (a) of this section. The alien must execute an affidavit stating that he or she has maintained status as a temporary resident. An alien who the examining officer believes to be deportable under section 241 of the Act is subject to issuance of an order to show cause and warrant of arrest and, if found to be deportable by an immigration judge, to termination of temporary resident status as provided in § 210.4(d) of this part. An alien who is excludable under section 210(c) of the Act who is not deportable under section 241 of the Act is not subject to termination of temporary resident status if the ground of excludability arose subsequent to the adjustment of the alien's status to that of a temporary resident. If the alien is deportable under section 241(a) of the Act because he or she was excludable at the time his or her status was adjusted to that of a lawful temporary resident, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability if a waiver is available under section 210(c) of the Act. If the alien applies for such a waiver, and the waiver is granted after the dates of adjustment set in paragraph (a) of this section, the adjustment of the alien's status to that of an alien lawfully admitted for permanent residence shall be recorded as of the date of adjustment appropriate for his or her group.

(3) *ADIT Processing.* An alien described in paragraph (b)(1) of this section must provide suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I-89.

Dated: March 11, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-6708 Filed 3-28-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80339-8039]

General License G-COM; Clarification

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: In the November 17, 1987 **Federal Register**, Export Administration published a final rule establishing a new General License GFW for exports of certain low level dual use items to most free world countries and expanding General License G-COM to allow shipments of additional low level dual use items to the COCOM allies and certain other countries (52 FR 43851). In revising General License G-COM, Export Administration inadvertently defined computers eligible for export under General License G-COM more restrictively than those eligible for export under General License GFW. This final rule corrects that error by adding a Special G-COM Note for Advisory Note 9 to ECCN 1565A stating that certain limitations imposed by Advisory Note 9 are waived for the purposes of determining G-COM eligibility.

EFFECTIVE DATE: This rule is effective March 29, 1988.

FOR FURTHER INFORMATION CONTACT: Will Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient

to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations is amended as follows:

PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by adding a "Special G-COM Note for Advisory Note 9" between Advisory Note 8 and Advisory Note 9 to read as follows:

"Special G-COM Note for Advisory Note 9: For the purposes of General License G-COM, the limitations imposed in Advisory Note 9 by paragraphs (a)(3), (b)(5) (i), (iii) and (iv), (b)(6)(iii), (b)(7) (iv), (v) and (vi), (b)(8)(i), (b)(9)(iii), and (c) are waived."

Dated: March 24, 1988.

Dan Hoydysh,

Acting Deputy Assistant Secretary, for Export Administration.

[FR Doc. 88-6832 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251 and 255

[Docket No. R-88-1375; FR-2445]

Miscellaneous Revisions to FHA Single Family and Multifamily Mortgage Insuring Authorities; Section 202 Per Unit Cost Limits; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects §§ 251.203(a) and 255.203(a) of a final rule published in the **Federal Register**, March 18, 1988 (53 FR 8874) that implemented a number of the amendments to HUD's single family and multifamily mortgage insurance authorities made by the Housing and Community Development Act of 1987.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-6500. (This is not a toll-free number.)

Accordingly, in FR Doc. 88-5904, published in the **Federal Register** issue of Friday, March 18, 1988 (53 FR 8874), §§ 251.203(a) and 255.203(a) are corrected as follows:

PART 251—[CORRECTED]

§ 251.203 [Corrected]

1. In § 251.203(a), on page 8887, in the middle of the second column, the first portion of the sentence that reads, "However, in any case that involves projects purchased or to be purchased * * *" is corrected to read, "However, in any case that involves project mortgages purchased or to be purchased * * *".

PART 255—[CORRECTED]

§ 255.203 [Corrected]

(2) In § 255.203(a), on page 8887, near the end of the third column, the first portion of the sentence that reads, "However, in cases involving projects to be purchased by * * *" is corrected to read, "However, in cases involving project mortgages purchased or to be purchased by * * *".

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 24, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88-6857 Filed 3-28-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to Bank Secrecy Act Regulations Regarding Reporting of Transactions With Foreign Financial Agencies

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: By **Federal Register** Notice dated October 26, 1987 (52 FR 39922), Treasury proposed two amendments to 31 CFR 103.25, which provides for reporting under the Bank Secrecy Act by designated financial institutions of prescribed transactions with foreign financial agencies. The first proposal would permit the Secretary to require the reporting of completed as well as future transactions. Reporting of completed transactions would be limited to information that financial institutions are required by law to maintain, or that they otherwise maintain in the ordinary course of business. The second proposal would permit the Secretary to direct financial institutions not to inform customers or any other parties of the existence of a reporting requirement imposed under § 103.25. After

consideration of the comments Treasury received in response to the Notice, the amendments are being adopted as proposed.

EFFECTIVE DATE: April 28, 1988.

ADDRESS: Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy G. Rudnick, Director, Office of Financial Enforcement, at the address listed above, or at (202) 566–8022.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1985 (50 FR 27821), the Department of the Treasury published a final rule which added § 103.25 to 31 CFR Part 103, the regulations implementing the Bank Secrecy Act, 31 U.S.C. 5311–5324. Pursuant to the authority set forth in 31 U.S.C. 5314, 31 CFR 103.25 established a procedure under which the Secretary may issue a regulation requiring designated financial institutions to report limited numbers of financial transactions with designated foreign financial agencies. Notice of such reporting requirements may be published in the **Federal Register** or may be served personally upon the affected financial institutions in accordance with 5 U.S.C. 553(b). The purpose of this limited-reporting procedure is to enhance the government's ability to monitor international transactions for tax, regulatory, and law enforcement purposes.

In the **Federal Register** Notice dated October 26, 1987 (52 FR 39922), Treasury proposed to amend § 103.25 in two respects. First, Treasury proposed to amend § 103.25(e)(3) to provide that financial institutions may be required to report on completed transactions with foreign financial agencies. With respect to completed transactions, however, the financial institution would be required to provide only information from records that it otherwise is required to maintain under Subpart C of Part 103 or any other provision of State or Federal law, or that it otherwise keeps in the normal course of business, thus imposing no new recordkeeping requirement on any financial institution. Section 103.25(e)(3) currently provides that the Secretary shall not issue a regulation requiring a financial institution to report transactions completed before it received notice of a reporting regulation under § 103.25(a). This provision prevents Treasury from obtaining information on completed transactions that would be useful for tax, regulatory and law enforcement purposes.

Second, Treasury proposed that in cases where the regulation requiring reporting under § 103.25 is not published in the **Federal Register**, Treasury may require a financial institution subject to reporting not to disclose the existence or provisions of the regulation to any party, including the foreign financial agency to which the reporting is related. Notice of the reporting requirement to the foreign financial agency or its customers can seriously impair its usefulness by allowing a person or institution to alter its pattern of transactions, thus distorting the information reported under § 103.25. The delay in disclosure is authorized by 31 U.S.C. 5314, which provides that the Secretary may prescribe "other matters * * * necessary to carry out" section 5314 or the regulations thereunder. 31 U.S.C. 5314(b)(5). It also is not prohibited by the Right to Financial Privacy Act of 1978, Pub. L. 95–630 (Nov. 10, 1978), as amended (12 U.S.C. 3401 *et seq.*), which does not require that notice of § 103.25 reporting be given to any party. This is because the information is "required to be reported in accordance with any Federal statute or rule promulgated thereunder." 12 U.S.C. 3413(d).

Discussion of Comments

Ten comments were received in response to the Notice of Proposed Rulemaking. The major comments focused on the authority of Treasury to require reporting on completed transactions, and to prohibit disclosure of the reporting requirement to any party.

On the issue of requiring reports of completed transactions, several commenters noted that the term "report" implies something which is compiled contemporaneously with the collection of the information. These commenters felt that reports reflecting information on completed transactions constituted information obtained from customer "records," which section 5314(c) says can be produced "only as required by law." Commenters were worried that normal recourse to subpoenas, summons and the like could be bypassed by this requirement.

In response, Treasury notes that section 5314 permits it to require, among other things, "reports when [a] resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency." The statute gives broad authority to the Secretary of the Treasury to impose reporting requirements covering a broad spectrum of persons, financial institutions, and foreign financial agencies. There are no restrictions on the timing of these reports, so Treasury could impose annual, semiannual, quarterly or monthly reports under this statutory provision if it desired to do so. Treasury already has imposed a yearly reporting requirement with respect to persons holding interests in foreign financial accounts. *See* 31 CFR 103.24. Therefore, there is sufficient authority to require reporting on completed transactions.

On the issue of nondisclosure to the parties of the reporting requirements, it was noted that in the initial promulgation of § 103.25 in 1985, Treasury stated in the accompanying supplementary information that "[E]ven if internal privacy guidelines require notice to customers of these reporting requirements, such notice should not reach customers until well into the short periods covered by the reporting requirements," 50 FR 27821, 27823 (1985), thus acknowledging that disclosure to customers would not be improper. Based on its experience in using § 103.25, Treasury has determined that notice to parties poses a problem in that the parties may alter their normal patterns of business in reaction to a notice of a reporting requirement, thus distorting the data reported. Nondisclosure of the existence of the reporting requirements is necessary to achieve the purposes of § 103.25.

Several comments reflected a misunderstanding of the applicability of the Right to Financial Privacy Act. Treasury notes again that the nondisclosure provision is necessary to preserve the utility of the information received under § 103.25, and is authorized under 31 U.S.C. 5314(b)(5), which permits the Secretary to prescribe "other matters * * * necessary to carry out this section or a regulation under this section." As for the Right to Financial Privacy Act, 12 U.S.C. 3412(d) exempts from the Act "information required to be reported in accordance with any Federal statute or rule promulgated thereunder." Because § 103.25 is derived from section 5314, and is information required to be reported by law or regulation, the notice provisions of the Right to Financial Privacy Act are inapplicable, and thus, notice to parties may be prohibited.

As has been noted above, § 103.25 is used to gather gross financial data about the international flow of financial transactions in order to aid in law enforcement. Section 103.25 and these proposed amendments are not designed or intended to obtain information for an existing investigation focused on a particular individual or organization. In such cases, there are established information collection procedures that strike a more appropriate balance

between the rights to be afforded an individual who is under investigation or involved in a dispute with the government and the legitimate needs of law enforcement and demands of society. Examples include the use of search warrants, judicial subpoenas, and administrative subpoenas and summonses. Accordingly, the existing restriction in § 103.25 prohibiting the use of reporting requirements in such circumstances shall also restrict these proposed amendments. However, information reported under these amendments will be treated the same as any other information collected under the Bank Secrecy Act, and may serve as the basis for initiating an investigation.

Other comments on the proposals also were made, for the most part dealing with the practicalities of an actual reporting requirement, such as the allowance of reasonable amounts of time to search for and retrieve needed information, and the difficulty of retrieving information by reference to particular transactions or foreign financial agencies when the records of the financial institution are not kept in that manner. Treasury notes that in issuing a reporting requirement, it anticipates requiring reporting of discrete amounts of information over a fairly limited period of time. The reporting requirement will describe, fully and clearly, any categories of information to be reported, and it will give ample time to the financial institution to make the report. The reporting requirement will identify a Treasury official to contact to work out any problems in complying with the reporting requirement.

Conclusion

For the reasons discussed above, the amendments are adopted as proposed.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any 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 foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Analysis

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and approved under OMB number 1505-0063.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement), Department of the Treasury.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigation, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

31 CFR Part 103 is amended as set forth below:

PART 103—[AMENDED]

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b, 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5324).

2. Section 103.25(a) is amended by adding a sentence at the end to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

(a) * * * If a financial institution is given notice of a reporting requirement under this section by means other than publication in the **Federal Register**, the Secretary may prohibit disclosure of the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party.

* * * * *

3. Section 103.25(e)(3) is revised to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

* * * * *

(e) * * *

(3) The Secretary may issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to Subpart C of this Part, or any other provision of state or federal law, or otherwise maintained in the regular course of business.

(Approved by the Office of Management and Budget under control number 1505-0063)

Dated: March 18, 1988.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 88-6817 Filed 3-28-88; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This amendment authorizes the Department of the Treasury to defer for up to fourteen (14) calendar days the transfer from, or within, the TREASURY DIRECT Book-Entry Securities System (TREASURY DIRECT) of a bond or note purchased on original issue, or on the additional issue of an outstanding issue. The amendment enables the Treasury to immobilize such a security until a sufficient period of time has elapsed to assure payment therefor has been duly credited.

EFFECTIVE DATE: March 29, 1988.

FOR FURTHER INFORMATION CONTACT: John E. Logue, Assistant Chief Counsel, Washington, DC, Office of the Chief Counsel, Bureau of the Public Debt (202) 447-9859.

SUPPLEMENTARY INFORMATION: The TREASURY DIRECT Book-Entry Securities System is designed for investors who ordinarily intend to retain their securities from issue date to maturity. While requests for transfers of securities either to the book-entry system maintained for despository institutions through Federal Reserve Banks, as fiscal agents of the United States, i.e., the commercial book-entry system, or to another TREASURY DIRECT account, are likely to be infrequent, such transfers are not only

permissible, but the TREASURY DIRECT system is capable of handling them almost as soon as the requests have been made. Where the payment of new bonds and notes is made by check, or other authorized forms of remittance, there is the possibility that the securities could be transferred before the funds are actually credited to the Treasury's account. The Department, therefore, bears the risk that the check, or other form of payment, will not be honored upon presentation. Accordingly, provision has been made to place a temporary hold on the transfer of bonds and notes securities newly-entered in a TREASURY DIRECT account, for a period of up to fourteen (14) calendar days. This provides a reasonable interval of time to assure that the Treasury will actually receive the payment without imposing an unreasonable burden on owners.

Special Analyses

Because this amendment relates to the terms and conditions of marketable Treasury securities, the notice and public procedures, and the delayed effective date requirements of the Administrative Procedure Act, (5 U.S.C. 553(a)(2)) are inapplicable. Moreover, since this rule is designed to prevent losses to the Government that could result from dishonored payments, its notice and public procedures would be inappropriate. It has been determined that the rule does not constitute a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply to this rule.

List of Subjects in 31 CFR Part 357

Banks, Banking, Bonds, Electronic fund transfer, Government securities, Reporting and reissuing requirements.

Accordingly, Part 357 is amended, as follows:

PART 357—[AMENDED]

1. Authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 12 U.S.C. 391.

2. Section 357.22(a) introductory text is amended by inserting a sentence at the end to read as follows:

§ 357.22 Transfers

(a) *General.* * * * Notwithstanding the above, for Treasury bonds and notes purchased on original issue or on the additional issue of an outstanding issue, the Department may defer transfer from, or within, TREASURY DIRECT for a period not to exceed fourteen (14) calendar days from the date of issue to assure that payment therefor has been received and credited to the Treasury's account.

* * * * *

Dated: March 23, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-6828 Filed 3-28-88; 8:45 am]

BILLING CODE 4810-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-011; FRL-3350-2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving some of the revisions to the Florida State Implementation Plan (SIP) which were submitted by the Florida Department of Environmental Regulation (FDER) on August 12, 1983, January 4, 1984, and June 13, 1984. EPA will take action in a separate notice on the revisions to Rule 17-2.510 (New Source Review for Nonattainment Areas). In addition, on November 30, 1983, FDER withdrew from consideration a portion of the revisions to 17-2.500 (Prevention of Significant Deterioration), specifically Section (2)(e)4.a. (i) and (ii), due to an error in wording. The State agreed to make the needed correction (by changing "or" to "and") and resubmit this revision. On November 19, 1986, FDER submitted the correction, and this revision is being acted on in a separate notice.

These revisions were considered for approval, along with two redesignation requests, on November 28, 1984 (49 FR 46767). The submittals amend regulations contained in the Florida Administrative Code (FAC), Chapter 17-2 (Air Pollution). These revisions include: the revision of an existing definition; the rewording of text describing the purpose of setting ambient air quality standards and revisions to the section which provides restrictions and prohibitions related to new sources which could cause violations of the ambient air standards; expanded procedures providing for the designation and redesignation of areas; a provision which states that the nonattainment designations for ozone and sulfur dioxide areas will remain in effect until such date as EPA makes effective the redesignation of these areas to attainment; and provisions for subjecting new or modified sources locating in air quality maintenance areas to the Reasonably Available Control Technology rules.

DATES: This rule will become effective on April 28, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301-8241

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 12, 1983, January 4, 1984, and June 13, 1984, the FDER submitted to EPA for approval revisions to the Florida SIP, and EPA is today approving most of the changes. Also, EPA will take action on the revisions to rule 17-2.510 (New Source Review for Nonattainment Areas) in a separate notice which will discuss the approvability of the entire rule. Up until this time, approval action on this rule has been on hold pending an EPA policy decision regarding the plantwide definition of a source. EPA has recently outlined procedures for approving regulations which use the plantwide definition of a source, and is in the process of reviewing Florida's rule for agreement with the new policy.

These revisions were proposed for approval, along with two redesignation requests, on November 28, 1984 (49 FR 46767). By the time the proposal notice was published, several changes had been made by the State which EPA was able to incorporate in the notice. The January 4, 1984, and June 13, 1984, submittals consisted of revisions affecting Rules 17-2.410 (Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas)) and 17-2.460 (Designation of Air Quality Maintenance Areas). The June 13, 1984, submittal amended the January 4, 1984,

version of these rules. The January 4, 1984, revision, in turn, updated the SIP submittal and request for area redesignations of August 12, 1983. The June 1984 submittal of the revised Rules 17-2.410 and 17-2.460 makes just one change to the State's regulations: it provides that the State-level effective date of the redesignation of each nonattainment area is to coincide with the effective date of the redesignation under Federal law. Previously, the state-level effective dates were specific dates tied to the schedule the State thought EPA would be able to meet in processing the redesignation requests.

These submittals contained certification that adoption of the revisions had been preceded by adequate notice and public hearing. A discussion of these revisions now follows:

- Rule 17-2.100 (Definitions) was amended by replacing the existing definition of "Redesignation of an Area" with the following: "A change in the designation or a redefinition of the boundaries of an area for any of the designations listed under Part IV of this chapter." Previously, "Redesignation of an Area" was defined as "the reclassification of an area to a different deterioration class or the redefinition of the boundaries of an area." By eliminating the reference to a "deterioration class" (refers to the class designations in prevention of significant deterioration areas), the State can reference a change in the designation of an area from nonattainment to attainment, or a change in the deterioration class of an area from the original designation (i.e., change from Class II to a Class I area).
- Rule 17-2.300 (Ambient Air Quality Standards) was amended as follows: Section (1), previously untitled, is now titled "General." In addition, section (1), which explains the need for establishing ambient air quality standards, has been rewritten in an effort to simplify the section. In section (2), the title has been changed to "Prohibitions and Restrictions." Also, section (2) has been rearranged and rewritten. However, the overall intent of the Section remains the same.
- Rule 17-2.400 (Procedure for Designation and Reclassification of Areas) has been amended by changing its title to "Procedures for Designation and Redesignation of Areas." In addition, the following changes were included. (1) The title of section (1) (Designation or Redesignation of Attainment, Nonattainment and Unclassifiable Areas. (Reserved)) was amended by changing the title to "General." (2) Paragraphs (a), (b), (c), and (d) have been added to section (1). Paragraph (a) provides that all areas of the state shall be designated as nonattainment, attainment, or unclassifiable with respect to each air pollutant for which an ambient air quality standard is established under Rule 17-2.300, and that this designation determines which emission standards, new and modified facility review requirements, and other pollution control measures shall apply to sources and activities which emit the pollutant or the precursor of the pollutant for which the area is designated. Paragraph (b) provides that under Rule 17-2.440, all areas that are designated as attainment or unclassifiable with respect to sulfur dioxide or total suspended particulate shall be further designated as a prevention of significant deterioration (PSD) areas. Paragraph (c) provides that under Rule 17-2.440, all areas of the State shall be designated as Class I, Class II, or Class III. For an area that is designated as a PSD area, the designation of the area determines which set of maximum allowable increases in sulfur dioxide or total suspended particulate concentrations established under Rule 17-2.310 shall apply in the area after a PSD baseline date is established. Paragraph (d) provides that under Rule 17-2.460 (new rule established in this submittal which will be discussed later in this notice) certain areas of the State shall be designated as air quality maintenance areas. Areas that have been redesignated from nonattainment to attainment or unclassifiable may be designated as air quality maintenance areas, with the effect that all previous emission limiting standards and permit limitations shall remain in effect. (3) The old title from section (1) has been moved and renumbered as section (2). (4) The old section (2) has been renumbered as section (3) and retitled as "Redesignation of Class I, Class II, and Class III Areas." There are also some minor revisions to the text in this section. (5) The old section (3) (Designation or Redesignation of Prevention of Significant Deterioration (PSD) Areas) has been renumbered as section (4). Again, some minor revisions occurred in this section. (6) A new section (section (5)) has been created entitled "Designation or Redesignation of Air Quality Maintenance Areas. (Reserved)."
- Rule 17-2.410 (Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas)) was revised to remove the specified dates of attainment for the listed ozone and sulfur dioxide nonattainment areas and replace these dates with the provision that these areas will remain nonattainment areas "Until such date as the U.S. Environmental Protection Agency makes effective the redesignation of the area to attainment."
- Rule 17-2.460 (Designation of Air Quality Maintenance Areas) is a new regulation established by FDER which lists the ozone and sulfur dioxide nonattainment areas (same list appears in Rule 17-2.410) and provides that effective on such date as the U.S. Environmental Protection Agency makes effective the redesignation of the area(s) to attainment, the area(s) will be designated as an air quality maintenance area(s). As an air quality maintenance area, all emission limiting standards and permit limitations that were established pursuant to Rules 17-2.17 (repealed), 17-2.510, and 17-2.650, or otherwise as a result of the SIP or nonattainment corrective plan, and all other air pollution control measures that were required under the SIP or nonattainment corrective plan, shall remain in effect in such areas. This provision ensures that the more restrictive requirements on existing sources remain in effect. However, new and modified facilities in the air quality maintenance areas will no longer be subject to nonattainment new source review requirements, but will be subject to the prevention of significant deterioration (PSD) or reasonably available control technology (RACT) requirements if applicable.

In conjunction with the development of this regulation, the State requested that the Pinellas County sulfur dioxide and Duval County ozone nonattainment areas be redesignated to attainment. In review of the particulate matter nonattainment areas, the State felt that these areas were likely to remain nonattainment for some time. Therefore, they opted not to list these areas in Rule 17-2.460. However, the State provided in Rule 17-2.400(1)(d) that when an area nonattainment for any pollutant (not just ozone and sulfur dioxide) is redesignated to attainment, the State may designate the area as an air quality maintenance area.

On July 1, 1987, EPA promulgated the PM_{10} National Ambient Air Quality Standards (NAAQS) which replaced the existing total suspended particulate (TSP) standards. As a result, the EPA particulate matter (PM) nonattainment areas, which were so designated based on TSP data, are eliminated. However, before EPA can approve a state's request to remove any state PM nonattainment designations, the state will have to have in place regulations which provide that conditions required

of an existing source prior to the redesignation will remain in effect. This ensures that any existing TSP control measures will remain active to assist with attaining the PM_{10} standards. Florida has agreed to make such a change, and will most likely designate the two particulate matter nonattainment areas (based on TSP data) (Hillsborough and Duval Counties) as air quality maintenance areas while making other changes to address the new PM_{10} NAAQS.

• Rule 17-2.500 (Prevention of Significant Deterioration) was amended as follows. (1) Section (2)(e)3. (Contemporaneous Emission changes) was amended by replacing the word "commits" with "is committed." (2) Sections (2)(e)4.a. (i) and (ii) were amended. However, FDER withdrew these revisions from consideration on November 30, 1983, due to an error in wording. (3) Section (2)(e)4.c.(i) was revised to include the phrase "or the old level of allowable emissions under Rule 17-2.650", and to replace the word "lower" with "lowest." The sentence now reads, "The old level of actual emissions, the old level of federally enforceable allowable emissions, or the old level of allowable emissions under Rule 17-2.650, whichever is lowest, exceeds the new level of actual emissions." This is a condition necessary to determine if a decrease in the actual emissions or in the quantifiable fugitive emissions of a facility is creditable. (4) Section (4)(b) was amended by replacing any reference to "Section" or "Subsection" with "Rule." (5) Section (4)(b)2.d. was renumbered as section (4)(b)2.e. and a new paragraph d was put in its place. Also paragraphs e and f were relabeled as f and g. (6) The new section (4)(b)2.d. provides that any decrease in actual emissions which was relied on in demonstrating attainment, defining reasonable further progress, or issuing a permit under the nonattainment new source review or RACT rules shall be included in the baseline emissions and shall not be considered in calculating the amount of any maximum allowable increases remaining available.

• Rule 17-2.650 (Reasonably Available Control Technology (RACT)) was revised to include that for section (1) (Volatile Organic Compounds), the emission limiting standards and other requirements of this section shall apply to new, modified, and existing sources of volatile organic compounds in designated ozone air quality maintenance areas (nonattainment areas that have been redesignated to attainment are considered maintenance areas). However, these provisions will not apply to those new or modified sources of volatile organic compounds subject to review pursuant to Rule 17-2.500 (PSD).

Final Action: EPA is approving the regulation revisions which were submitted to EPA on August 12, 1983, January 4, 1984, and June 13, 1984, as detailed in this notice, except for the revisions to Rule 17-2.500(2)(e)4.a. (i) and (ii), which were withdrawn on November 30, 1983. In addition, the revisions to Rule 17-2.510 (New Source Review for Nonattainment Areas) will be acted on in a separate notice discussing the approvability on the entire rule, which up until this time has not been proposed for approval.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the director of the Federal Register on July 1, 1982.

Date: March 7, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart K—Florida

1. The authority citation for Part 52 continues to read as follows:

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

2. Section 52.520 is amended by adding paragraph (c)(53) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(53) Changes to Florida Administrative Code (FAC), Chapter 17-2, submitted on August 12, 1983, and June 13, 1984, by the Florida Department of Environmental Regulation (FDER).

(i) Incorporation by reference.

(A) August 12, 1983, letter and April 17, 1984, certification of Administrative Rules filed with the Department of State, from the Florida Department of Environmental Regulation.

(B) Amendments to Florida Administrative Code Rules 17-2.100(132), 17-2.300 (1) and (2), 17-2.400 (1) through (5), 17-2.500(2)(e)3, 17-2.500(2)(e)4.c.(i), 17-2.500(4)(b), 17-2.650(1)(a). These revisions were adopted on July 1, 1983, by the State of Florida Department of Environmental Regulation.

(C) Amendments to Florida Administrative Code Rules 17-2.410 (1) and (3), and 17-2.460, approved on April 17, 1984, by the State of Florida Department of Environmental Regulation.

(ii) Additional material—none.

[FR Doc. 88-6187 Filed 3-28-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Temporary Regulation A-30, Supp.2]

Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to June 30, 1988, the expiration date of FPMR Temporary Regulation A-30.

DATES:

Effective date: February 1, 1988.

Expiration date: June 30, 1988, unless sooner revised or canceled.

FOR FURTHER INFORMATION CONTACT: Phyllis M. Hickman, Travel and Transportation Management Division on (703) 557-1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–7

Government property management, Motor vehicles, travel.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following Supplement 2 to FPMR Temporary Regulation A–30 is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A–30 Supplement 2

To: Heads of Federal agencies
Subject: Use of contract airline/rail passenger service between selected cities/airports

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation A–30.

2. *Effective date.* This regulation is effective February 1, 1988.

3. *Expiration date.* This supplement expires June 30, 1988, unless sooner revised or canceled.

4. *Explanation of change.* The expiration date in par. 3 of FPMR Temporary Regulation A–30 is revised to June 30, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–6725 Filed 3–28–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC–270–F]

Medicare Program; Changes to the Lesser of Costs or Charges Provisions

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

ACTION: Final rule.

SUMMARY: We are revising the regulations governing application of the lesser of costs or charges provision, which is used for computing Medicare payment for certain providers of covered health care services, to reflect certain provisions of the Deficit Reduction Act of 1984.

• Effective with cost reporting periods beginning on or after October 1, 1984, the aggregation method of calculating the lesser of costs or charges, which compares total reasonable cost and customary charges for services without regard to whether the services were furnished under Part A or Part B of Medicare, is eliminated.

• Effective with services furnished to Medicare beneficiaries on or after July 18, 1984, home health agencies are to be paid the lesser of the reasonable cost of durable medical equipment or the customary charges (less a 20 percent coinsurance), but not more than 80 percent of the reasonable cost of the equipment.

• Effective with cost reporting periods beginning on or after October 1, 1984, the regulations that govern payment for providers that furnish services either free of charge or at a nominal charge are revised.

In addition, we are providing that, effective with cost reporting periods beginning on or after April 28, 1988, the carryover provisions, which permit a provider to accumulate and carry forward (to subsequent cost reporting periods) costs that previously went unreimbursed because the provider's charges were lower than its costs, are eliminated.

DATES: This final rule is effective on April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Anthony Coates, (301) 966–4515.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, inpatient services furnished by providers such as hospitals or skilled nursing facilities (SNFs) are covered and paid for under Part A (Hospital Insurance) of the program. Outpatient services furnished by providers such as hospital outpatient departments or outpatient physical therapy and speech pathology clinics (OPTs) are covered and reimbursed under Part B (Supplementary Medical Insurance) of Medicare.

Effective with cost reporting periods beginning on or after January 1, 1974, payment for both Part A and Part B services furnished by most providers was based (under sections 1814(b) and 1833(a)(2) of the Social Security Act (the Act), as amended by section 233 of the Social Security Amendments of 1972 (Pub. L. 92–603) (the 1972 Amendments)) on the lesser of the reasonable cost of the services, as determined under section 1861(v) of the Act, or the provider's customary charges for the services. This reimbursement method is generally known as the "lesser of costs or charges (LCC) principle", and is set forth in regulations at 42 CFR 413.13. The LCC principle was established to reduce Medicare costs by ensuring that the program would not pay more for services than the provider charges to the general public (S. Rep. No. 1230, 92nd Cong., 2d Sess. 202 (1972)). This principle was applied to all covered services of the following providers—

• Hospitals;

• SNFs;

• Home health agencies (HHAs); and

• OPTs.

As a result of the rate-of-increase limits (section 1886(b) of the Act) and the prospective payment system (section 1886(d) of the Act), most hospital services are no longer subject to the LCC principle. Specifically, the LCC provisions are not applicable to Part A inpatient hospital services for cost reporting periods that are subject to either the ceiling on the rate of hospital cost increases (see § 413.40) or payment under the prospective payment system (see 42 CFR Part 412). Consequently, effective with cost reporting periods beginning on or after October 1, 1982, the LCC principle has applied only to covered services furnished by SNFs, HHAs and OPTs, and to all covered—

• Hospital outpatient services and certain inpatient ancillary services reimbursable under Part B only; and

• Inpatient and outpatient services furnished by hospitals (or units of hospitals) that would otherwise be subject to the target rate of increase limits when the services are furnished during the period in which the hospital or unit is temporarily exempt from the rate-of-increase limits as a new hospital or unit under § 413.40(f)(1).

A. Application of the Aggregation Method in Calculating the LCC

The method for calculating the LCC amounts is based on an aggregation of the cost and charges for services covered under Part A and Part B. The current § 413.13(c) provides that total costs and charges are compared *without regard* to whether the services were furnished under Part A or Part B of Medicare. After comparing the reasonable costs to the customary charges, the provider is reimbursed based on the lesser of the two amounts. Under the current regulations (§ 413.13(d)), if application of the aggregation method of computing LCC results in a provider's customary charges being lower than its reasonable costs in a reporting period, the provider may, in general, carry forward the unreimbursed costs for the two succeeding cost reporting periods.

On July 18, 1984, the President signed into law the Deficit Reduction Act of 1984 (Pub. L. 98–369). Title III of Division B of Pub. L. 98–369 (that is, the Medicare and Medicaid Budget Reconciliation Amendments of 1984) contains several changes relating to the LCC provisions.

Section 2308(a) of Pub. L. 98–369 directs the Secretary to issue regulations, applicable to cost reporting periods beginning on or after October 1, 1984, eliminating the aggregation method of calculating LCC and requiring that LCC be calculated and reported separately for services furnished under Part A or Part B, with the exception of clinical diagnostic laboratory tests paid under section 1833(h) of the Act (which are excluded from the LCC calculation). Also, the regulations must provide for payment on the basis of separate determinations of LCC for services furnished under Part A or Part B.

B. The Carryover Provisions

Under the current regulations (§ 413.13(d)), if application of the aggregation method of computing LCC described above results in a provider's customary charges for covered services being lower than the reasonable cost of the services in a cost reporting period, the provider may carry forward the unreimbursed costs for the two succeeding cost reporting periods. Moreover, if the two succeeding cost reporting periods combined are less than 24 full calendar months, the unreimbursed costs may be carried forward for three succeeding cost reporting periods. The provider may add its unreimbursed costs (identified as Part A costs or Part B costs, and limited to the excess of charges over costs for the respective parts, in order to maintain the integrity of the trust funds) from the previous cost reporting period to the allowable program reimbursement for the current cost reporting period. The total allowable program reimbursement in any cost reporting period cannot exceed the customary charges for that period.

There are two exceptions to this accounting procedure. First, new providers of services (see § 413.13(d)(2)) are permitted to carry forward the unreimbursed costs for five succeeding cost reporting periods or, if the five succeeding cost reporting periods combined are less than 60 full calendar months, for six cost reporting periods. Second, any recovery of unreimbursed Part A costs (or costs of Part B services furnished by HHAs) is prohibited in any cost reporting period if the costs were not reimbursed because the provider exceeded the cost limitations as specified in § 413.30 or § 413.40.

C. Durable Medical Equipment Furnished by HHAs

Under § 413.13(a), payments to HHAs for durable medical equipment (DME) furnished to Medicare beneficiaries are subject to the LCC principle. Prior to enactment of section 2321 of Pub. L. 98–369, if a beneficiary was under a home health plan of treatment, the use of medical appliances furnished by an HHA was a covered home health service under either Part A or Part B (with no deductible or coinsurance charge). In addition, an HHA could furnish DME under Part B as a "medical and other health service" (subject to the Part B annual deductible and 20 percent coinsurance).

Section 2321 of Pub. L. 98–369 amended the definition of covered "home health services" in section 1861(m)(5) of the Act to delete the reference to "medical appliances" and to refer specifically to the furnishing of DME to a beneficiary while under a home health plan. Section 2321 also added section 1814(k) of the Act to provide for the following. First, HHAs are to be reimbursed the lesser of the reasonable cost of this equipment or the customary charges (less 20 percent of the reasonable charges as provided in section 1866(a)(2)(A)(ii) of the Act). Second, the payment may not exceed 80 percent of the reasonable cost for the equipment regardless of whether the item is furnished under Part A or Part B. Section 2321(g) of Pub. L. 98–369 makes these provisions applicable to DME furnished on or after July 18, 1984.

Section 3(b)(1) and (c) of Pub. L. 98–617 (enacted on November 8, 1984) amended section 1814(k) of the Act to provide that, effective July 18, 1984, payment to HHAs with respect to DME, is to be 80 percent of fair compensation, as determined by the Secretary, if the DME is furnished by a public HHA or an HHA with a significant portion of its clientele who are low-income patients.

D. Nominal Charges

As an exception to the LCC principle, § 413.13(a) provides that public providers furnishing services either free of charge or at a nominal charge are to be reimbursed fair compensation for those services. Under § 413.13(b)(4), a public provider's charges are considered nominal if the aggregate charges are less than one-half of the reasonable cost of services or items represented by these charges. According to § 413.13(e), fair compensation for these services is defined as the full reasonable cost of the services.

Section 2308(b)(1) of Pub. L. 98–369 requires the Secretary to revise the definition of nominal charges and to provide that charges would be considered nominal if they are 60 percent or less of the reasonable cost of services or items represented by the charges (rather than less than 50 percent as previously provided). Section 2308(b)(1) also requires that the determination of nominal charges is to be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests paid under section 1833(h) of the Act) or with respect to inpatient and outpatient services. Section 2308(b)(1) further provides that, for services furnished by HHAs, the Secretary may allow the determination of nominal charges to be made on an aggregate basis for Part A and Part B services if the Secretary finds that a separate determination is not appropriate.

Section 2308(b)(2) of Pub. L. 98–369 amended sections 1814(b) and 1833(a)(2)(B)(ii) of the Act to provide that the nominal charge provisions, which currently apply to public providers only, are applicable to other providers that demonstrate to the Secretary's satisfaction that a significant portion of their patients are low-income. The providers would have to request that Medicare reimbursement be subject to the nominal charge provisions.

In the conference report accompanying Pub. L. 98–369, Congress expressed the intent that providers that use a sliding scale or a discounted schedule of charges that differentiates among patients on the basis of their ability to pay be allowed to use a sliding scale of charges (that is, charges less than the provider's established charges) or a discounted schedule of charges rather than to deem the charges to be full customary charges as actually billed for all patients (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1344 (1984)). For this purpose, the Secretary is instructed to aggregate charge data for all Medicare patients and for all non-Medicare patients who are liable for payment on a charge basis. For example, if a provider appropriately applies a sliding scale of charges based on patients' ability to pay, we are to determine the ratio of sliding scale charges to the provider's customary schedule of full charges. This ratio would then be applied to the Medicare charges in order to equate the Medicare charges to the customary charges for purposes of the nominality test.

II. Summary of Proposed Rule

On September 18, 1986, we published a notice of proposed rulemaking (NPRM) (51 FR 33074) in which we proposed to reorganize the entirety of § 405.455 (subsequently redesignated as § 413.13) to accommodate the statutory changes discussed above and to update the regulations text, as follows:

• In accordance with section 2308(a) of Pub. L. 98–369, we proposed to revise § 413.13 by—

—Prohibiting, effective with cost reporting periods beginning on or after October 1, 1984, the use of the aggregation method for computing LCC; and

—Providing that total customary charges are to be compared, separately for Part A and for Part B, with total reasonable costs for covered items and services.

• We proposed to revise § 413.13 to prohibit providers from carrying forward to succeeding cost reporting periods any reasonable costs that were not reimbursed because they exceeded the provider's customary charges. Unlike the other proposals, this change was to apply to cost reporting periods beginning on or after the effective date of the final rule.

• As required by sections 2321 (a) and (b) of Pub. L. 98–369, we proposed to reimburse HHAs that furnish DME as a home health service the lesser of the reasonable cost of the equipment or the customary charges (subject to the 20 percent coinsurance imposed by section 1866(a)(2)(A)(ii) of the Act), not to exceed 80 percent of the reasonable cost for the equipment (see proposed § 413.13(c)(2)(ii)). Payment is 80 percent of fair compensation for HHAs meeting the nominality test. We proposed that this determination for DME furnished in an HHA would be computed separately from all other services furnished by an HHA.

• In accordance with section 2308(b) of Pub. L. 98–369, we proposed to revise § 413.13 in the following manner:

—We proposed to change the definition of nominal charges from charges that are less than 50 percent of reasonable costs to charges that are 60 percent or less of the reasonable cost of the services or items represented by the charges. Section 2308(b)(1) of Pub. L. 98–369 also directs that the charges used in making nominality determinations be the charges actually billed to charge-paying patients who are not entitled to Medicare benefits. We proposed to add this provision to § 413.13(f)(2)(ii).

—The determination of nominal charges was to be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests that are paid under section 1833(h) of the Act) unless the intermediary decides that the determination is to be made separately with respect to inpatient and outpatient services. We proposed that Medicare's fiscal intermediaries would make this decision on an individual provider basis.

—For providers that use a sliding scale or discounted charges based on their patients' ability to pay, we proposed that nominal charges would be determined by using a sliding scale or discounted schedule of charges, and on the basis of charges billed to non-Medicare charge-paying patients. We further proposed that the intermediary would make this determination in the same manner as described above, that is, separately with respect to Part A and Part B services or with respect to inpatient and outpatient services.

—For HHAs, we proposed that the determination of nominal charges would be computed on an aggregate basis; that is, Part A and Part B charges would be totalled and compared with reasonable costs of the items and services without regard to whether the items or services are reimbursed under Part A or Part B of Medicare. Under our proposal, the determination of nominal charges for DME furnished by HHAs would be made separately from the determination of nominal charges with respect to other HHA services, as authorized under section 2308(b)(1) of Pub. L. 98–369.

• Section 2308(b)(2) of Pub. L. 98–369 amended sections 1814(b)(2) and 1833(a)(2)(B)(ii) of the Act to provide that the nominal charge provisions be extended to nonpublic providers that furnish a significant portion of their services to low-income patients. Therefore, we proposed to revise § 413.13 to allow providers with a significant portion of low-income patients to apply the nominal charges provisions. If a nonpublic provider's customary charges are 60 percent or less of the reasonable cost represented by the charges, and the provider can demonstrate that its charges are low because its customary practice is to charge patients based on their ability to pay, we stated that we would deem the provider to be furnishing services to a significant portion of low-income patients. We also proposed that the charges would be accounted for on a separate basis for inpatient and outpatient services in determining whether the nominality provisions are met.

• For HHAs that meet the nominal charge provisions, we proposed, in accordance with section 1814(k)(2) of the Act as amended by section 3(b)(1) of Pub. L. 98–617, to revise § 413.13 to provide that payment for DME, furnished by public HHAs or HHAs furnishing services to a significant portion of low-income patients, is 80 percent of fair compensation for that equipment. All items and services (other than DME) furnished by providers that meet the nominal charge provisions are reimbursed on a reasonable cost basis (fair compensation), rather than the lesser of reasonable costs or customary charges.

III. Provisions of This Final Rule

In this final rule, we are adopting the main provisions of the proposed rule as final. With the exception of the elimination of the carryover provisions, the changes to the regulations conform to the clear intent of the pertinent provisions of Pub. L. 98–369 and Pub. L. 98–617.

The proposal to eliminate the carryover provisions, which enable providers to carry forward, for two succeeding cost reporting periods (or for five succeeding cost reporting periods in the case of new providers), any reasonable costs that were not reimbursed because they exceeded the provider's customary charges, is also adopted as final. Although this proposed change was not mandated by law, and despite public comments in opposition to this particular change (which are addressed in the "Comments and Responses" section below), we believe that the carryover provisions are no longer necessary.

Section 2308(b)(1) of Pub. L. 98–369 requires that the determination of nominal charges is to be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests paid under section 1833(h) of the Act) or with respect to inpatient and outpatient services. The proposed rule provided that Part A and Part B services were to be used separately to determine nominal charges unless the intermediary decides that the determination is to be made separately with respect to inpatient and outpatient services. We agree with those comments that stated that the distinction between Part A and Part B services is a unique Medicare distinction designed to ensure that payment for services is made from the correct Medicare Trust Funds. That distinction is not necessary, used, or applicable for charge-paying non-Medicare patients. We agree that Medicare fiscal intermediaries would be able to make a nominal charge determination for charge-paying non-Medicare patients only by distinguishing between inpatient and outpatient services. Accordingly, we are revising the proposed § 413.13(f)(2)(ii) to state that the determination of nominal

charges will be made separately solely for inpatient and outpatient services.

On October 1, 1987, a final rule was issued to implement section 1833(i)(3) of the Act concerning payment for facility services related to covered ambulatory surgical center surgical procedures performed in hospitals on an outpatient basis (52 FR 36765). In that document, § 413.13(c) was revised to incorporate a conforming change on payment for those facility services. In this document, we are redesignating § 413.13(c)(2) as § 413.13(c)(2)(ii) as part of the overall reformatting of § 413.13.

IV. Comments and Responses

A total of 84 items of correspondence were received timely during the comment period, of which 49 items were form letters from Medicare beneficiaries. A summary of the public comments, and our responses to the comments, are presented below:

A. Aggregation Method

Comment: Several commenters stated that the elimination of the aggregation method of calculating the LCC would prevent providers from furnishing low-volume (but high cost) Part B ancillary services, not available elsewhere in a community, that under the aggregation method were previously subsidized by the excess of Part A charges over costs.

Response: Section 2308(a) of Pub. L. 98–369 required the Secretary to issue regulations eliminating the aggregation method of calculating LCC. Generally, we believe that it is in the best interest of the Medicare program for charges to be related to the costs of providing the services. We believe that elimination of the aggregation method will promote the proper allocation of Part A and Part B costs, thereby improving the accuracy of Medicare payments for covered services. In any event, we are implementing the law as directed by Congress.

Comment: Several commenters opposed retroactive application of the elimination of the aggregation method.

Response: The regulatory changes concerning the aggregation method made by this final rule apply, as required by section 2308(a) of Pub. L. 98–369, to cost reporting periods beginning on or after October 1, 1984. While we are issuing a final rule at this time to change the regulations to reflect the provisions of section 2308 of Pub. L. 98–369, we notified the public and the health care industry in September 1986 that the aggregation method would be eliminated for those cost reporting periods, as mandated by Congress. (See Part II of the Provider Reimbursement Manual (Provider Cost Reporting Forms and Instructions) (HCFA Pub. 15–II), Transmittal No. 22, September 1986.)

B. Carryover Provisions

Comment: Many commenters opposed the elimination of the carryover provisions, stating that its elimination was not mandated by law and taking issue with the assertion in the NPRM that the elimination of the carryover provisions is within the Secretary's discretionary authority. The commenters view the proposal as representing a major change in Medicare reimbursement principles that requires new statutory authority, and as a violation of Congressional intent that the carryover provisions be promulgated and maintained.

Response: The carryover provisions were not mandated by statute. Rather, they resulted from the exercise of administrative discretion in response to the Congressional committee reports accompanying the enactment of the LCC principle in Pub. L. 92–603. In these reports, Congress did not mandate inclusion of the carryover provisions in the regulations. Rather, Congress merely recognized the desirability of including a carryover provision at that time so that providers would not be penalized for discrepancies between costs and charges arising from miscalculation of anticipated costs and charges under the LCC principle. See H.R. Rep. No. 231, 92d Cong., 2d Sess., reprinted in 1992 U.S. Code Cong. and Ad. News 4989, 5088. As we stated in the NPRM (51 FR 33077), we believe that, in the subsequent period of more than a decade, the health care industry has had sufficient experience and adequate time to make necessary adjustments, and to establish a proper relationship between costs and charges. For reasons of greater administrative efficiency and long-term provider experience with the cost-to-charge relationship, we believe it is appropriate to eliminate the carryover provisions.

Comment: One commenter suggested that it is incorrect to view the carryover provisions as independent of the LCC provisions, and that eliminating the carryover provisions undermines the logic of the LCC provisions. As such, the traditional annual cost reporting period might, in some instances, not give a provider sufficient time to establish a proper cost-to-charge relationship. Therefore, a period of time longer than a single cost reporting period is necessary to recover costs previously unreimbursed under LCC.

Response: As explained above, while the LCC principle is mandated by sections 1814(b) and 1833(a)(2) of the Act, the specific inclusion of the carryover provisions in the regulations resulted solely from administrative discretion guided by indicated Congressional intent. The original basis for inclusion of the carryover provisions in the regulations is no longer applicable. While we have decided to exercise our administrative discretion again and eliminate the carryover provisions, the LCC principle is still mandated by statute. In any event, elimination of the carryover provisions will not detract from "the logic" of the LCC principle because providers have had many years of experience in adjusting charges to the level of costs.

Comment: Some commenters viewed the elimination of the carryover provisions as a measure that will penalize a provider that, due to unforeseen circumstances, ends its year with costs considerably higher than charges. The commenters stated that, in such a situation, the provider could unfairly shift the payment burden to other payors. Also, with increased pressure on providers to raise charges, Medicare expenditures may rise, and coinsurance for Medicare beneficiaries may increase.

In addition, one commenter believes that the elimination of the carryover provisions will cause undue financial hardship to many SNFs, ultimately increasing program costs as providers are forced to set charges for the general public at substantially higher levels than estimated costs in order to avoid being penalized.

Response: We recognize the possibility that providers may raise charges to match (or exceed) costs with the intent of minimizing or eliminating the disallowance of costs under the LCC provisions, which could result in increased program expenditures for the current period. Nevertheless, we do not expect providers to raise charges unnecessarily for the following reasons, as we stated in the NPRM (51 FR 33077):

- Providers that continually incur unreimbursed costs from year to year do not have the opportunity to recover the disallowed costs with or without these changes because, in order to recover unreimbursed costs, charges must exceed costs in subsequent years.
- Providers that incur unreimbursed costs on a nonrecurrent basis may be able to reduce or eliminate these costs through sound financial practices such as—

—Anticipating capital expenditures and building them into their charge structure; or

—Creating allowances within their charge structure for unanticipated expenditures.

Section 1861(v)(1)(A) of the Act states that regulations defining reasonable cost should provide that the costs of covered services furnished to beneficiaries are not to be borne by non-Medicare patients; conversely, the costs of services provided to non-Medicare patients are not to be borne by Medicare beneficiaries. We expect that there will be no unfair shifting of the payment burden to non-Medicare patients.

Comment: Some commenters believe that the elimination of the carryover provisions should be imposed on a prospective basis. They recommend that the carryover provisions continue for SNFs until such time as the unreimbursed costs, which existed as of each facility's most recently filed cost report, have been recovered, or that recovery of disallowances be permitted based on the policy in effect when the cost report was filed.

Response: The elimination of the carryover provisions is effective on a prospective basis. That is, only costs disallowed under the LCC principle during cost reporting periods beginning on or after the effective date of the final rule (that is, April 28, 1988) may not be carried over to successive years. However, this change will not preclude providers from recovering previously disallowed costs in completing the carryover period specified in regulations.

Comment: Some commenters stated that small providers without sophisticated automated cost reporting capabilities will not be able to adjust charge levels quickly to accommodate changes in costs and utilization. These providers will be forced either to incur additional administrative expenditures to develop the capability of continuously monitoring and changing charge schedules or simply to decrease participation in Medicare to protect against possible financial losses.

Response: The LCC principle has always caused providers to monitor charge schedules to avoid LCC disallowances and to attempt to establish charge levels sufficient to recover disallowances carried over from prior years. Under principles of sound business practice, in addition to the provisions of this rule, providers should monitor their charges on an ongoing basis. Moreover, necessary costs incurred for monitoring charge schedules continue to be includable as allowable administrative costs. Thus, the elimination of the carryover provisions under this rule should not significantly affect the reimbursement of a provider's administrative costs even if such costs eventually increase.

If a provider's total charges are less than its total costs, then the provider will realize an LCC disallowance. Although a reduction in the provider's Medicare participation would decrease the total amount of the LCC disallowance, this would not detract from Congress' intent that the LCC provisions will ensure that the Medicare program pay no more than the provider charges to the general public.

Moreover, a reduced LCC disallowance under Medicare, as a result of a reduction in the provider's Medicare utilization, would not protect a provider against financial losses from non-Medicare charge-paying patients. These "losses" are not a function of the Medicare program, but rather such losses occur when a provider's charges are established at a level insufficient for the provider to recover its costs from non-Medical patients. Thus, the elimination of the carryover provisions contributes to the purpose of the LCC provisions, which is to ensure that Medicare pay no more than the provider charges non-Medicare patients responsible for payment on a charge basis.

Comment: Some commenters stated that many providers do not know the impact of the LCC provisions until after the end of their fiscal year. At that time, it is too late to make retroactive changes and the provider can only make financial adjustments for the following year. The commenters believe that it is only fair, therefore, to give HHAs at least one year to carry forward costs in excess of charges. They asserted that, with the implementation of the inpatient hospital prospective payment system, HHA and OPT patients are requiring services that are more intensive and of a longer duration, resulting in increased personnel costs. Furthermore, firm knowledge of allowed costs sometimes is not available until six to nine months after the end of the cost reporting period. Therefore, the ongoing matching of charges to increasing costs is very difficult at best.

Response: We believe that sound business practices require that providers generally know with relative accuracy their actual costs incurred during the year, and certainly know with equal accuracy their charges as they are imposed regardless of whether costs remain constant or increase due to higher personnel costs or for some other reason. Thus, a provider is in a position during the year to monitor both its charges and costs to assess the potential impact of the LCC provisions.

We disagree with the commenters' suggestion that fairness requires that HHAs should have at least one year to carry forward costs in excess of charges. To do so would be contrary to ensuring Congress' intent in enacting the LCC principle, which was that Medicare pay no more than the provider charges non-Medicare patients responsible for payment on a charge basis. Justification existed in the past to permit the carryover of disallowed costs because providers needed the opportunity to adjust their charges to avoid LCC disallowances when the provisions were first enacted. But now that providers have had long-term experience in adjusting the relationship between costs and charges, the continuation of the carryover provisions could result in the program paying more than the provider charges the general public in derogation of the express purposes of the LCC principle.

Comment: Some commenters stated that the proposed changes will necessitate monitoring the cost to charge relationship on an ongoing basis, which is becoming more difficult to do because HHA administrative costs may, and often are, unexpectedly increased by factors beyond an HHA's control. The commenters identified those factors as being primarily in the form of policy changes or interpretive changes by the fiscal intermediaries and HCFA itself, such as new requirements in claims processing and fewer covered visits due to new interpretations of coverage criteria.

Response: As stated above, we agree that it is necessary to monitor on an ongoing basis the cost to charge relationship due to increasing costs whether such increases are due to higher administrative costs (regardless of the source of the increase), higher salaries, supplies, or any other items of cost. The necessary costs incurred for monitoring charge schedules continue to be includable as allowable costs.

Comment: One commenter stated that while the cost to Medicare of retaining the carryover provisions is minimal, the cost of the elimination of the provisions would be considerable for small HHAs. The commenter explained that if an HHA's charges are less than costs, it is suffering a twofold loss, that is—

- It is not securing from the patient the coinsurance (20 percent of cost); and
- Medicare reimburses only 80 percent of its charges, which is less than the HHA's actual cost of providing the service.

The commenter believes that Congress clearly intended that HHAs be allowed to carry forward unreimbursed costs to the following year so that

providers would be reimbursed the actual costs of delivering care.

Response: Congress did not envisage reimbursement of a provider's actual costs without qualifications. Rather, under section 1861(v)(1)(A) of the Act, reimbursement is limited to those of a provider's actual costs that are necessary in the efficient delivery of services as determined by the Secretary's "reasonable cost" regulations (42 CFR Part 413).

As explained above, while we exercised discretion in the past by including the carryover provisions in the regulations, there is no further need for them. In any event, providers can avoid the twofold loss by closely monitoring their charges and costs.

Comment: One commenter stated that, if HHAs are not reimbursed their reasonable costs because of the elimination of the carryover provisions, there would be an adverse effect on HHAs and Medicare beneficiaries in terms of maintaining and improving the quality of patient care.

Response: Providers can be ensured of full Medicare reimbursement of their reasonable costs under the LCC principle if their charges are maintained at a level at least equal to their costs. Moreover, elimination of the carryover provisions is consistent with the purpose of the LCC principle, which is to ensure that Medicare pay no more than the provider charges non-Medicare patients. As we stated above, although justification for the carryover provisions existed in the past (that is, during the early years of the Medicare program, providers needed the opportunity to adjust their charges to avoid LCC disallowances), that need no longer exists. Moreover, the continuation of the carryover provisions could result in the program paying more than the provider charges non-Medicare patients.

Comment: One commenter stated that if DME costs exceeded charges in future periods, then all costs would not be reimbursed. Therefore, providers will find it necessary to increase their borrowed capital. Furthermore, the commenter stated that saving money in one cost center will end up costing money in other cost centers due to increased interest expense.

Response: We do not believe that the elimination of the carryover provisions creates the need to borrow capital on an ongoing basis. Consequently, there would be no need to shift costs from one cost center to another. In adjusting its cost to charge relationship, a provider can anticipate capital needs and generally build them into its charge structure.

Comment: One commenter took exception to a statement in the NPRM that if providers increase charges, beneficiaries may obtain their care at other facilities. The commenter pointed out that in many rural areas, there is no other means of obtaining medical care, and by increasing charges and coinsurance, we are placing an unfair burden on the poor and the elderly. In addition, many beneficiaries who are unable to qualify for Medicaid cannot afford supplemental insurance policies. Also, increased coinsurance amounts will result in increased Medicare-reimbursable bad debts.

Response: As a result of the effects of the provisions of this final rule, we believe that, in a few instances, beneficiaries may seek other facilities for medical care. (We acknowledge that if other facilities are not available, then the imposition of higher charges would result in a higher coinsurance amount imposed on Medicare beneficiaries.) We also believe, however, that there may be instances in which providers can avoid an increase in charges by reducing their costs. Thus, beneficiaries would not incur increased charges and coinsurance, and reimbursable bad debts would not increase. Nevertheless, in either case, the program must fulfill the intent of the LCC provisions to pay no more than the level of charge imposed on non-Medicare patients responsible for payment on a charge basis.

Comment: One commenter stated that while HCFA encourages competition among health care providers, the elimination of the carryover provisions will diminish such competition.

Response: We do not agree that the elimination of the carryover provisions will diminish competition among providers. To the contrary, we believe that providers will be even more motivated to adjust their charges and to control their costs in a manner consistent with greater economic efficiency and enhanced competition. Thus, the elimination of the carryover provisions rule should increase competition.

Comment: Two commenters said that eliminating the carryover provisions for a new institution or distinct unit is unrealistic, because new providers offer services knowing that the initial years will result in losses since Medicare pays only costs. The commenters suggested that we consider continuing the carryover provisions for only new providers having cost reporting periods beginning after October 1, 1984, thus, affording them ample opportunity to recover their start-up costs.

Response: We recognize that eliminating the carryover provisions for new providers makes circumstances less favorable for some of them because costs disallowed under the LCC provisions can no longer be carried forward. However, the "losses" represented by these disallowed costs are not merely a function of participation in the Medicare program. Rather, they stem from a new provider's establishment of charges at a level insufficient to cover its costs from all patients, non-Medicare and Medicare. We believe that the elimination of the carryover provision is appropriate for all providers because it will establish an incentive to set charges high enough to cover costs.

Comment: One commenter said that the elimination of the carryover provisions will impact significantly on newly constructed facilities to the extent that, in order to avoid the LCC "penalty" of disallowed costs, new providers will be forced to establish initial charges at excessively high levels that are noncompetitive and unrelated to the ongoing cost of operating the facility at normal occupancy levels. In addition, Medicare will be required to reimburse higher costs in the current year instead of deferring reimbursement to subsequent years.

Response: The commenter believes that the elimination of the carryover provisions will force new providers to establish charges at excessively high levels to compensate for higher costs resulting from low occupancy. As such, the provider would have to pass on the high levels of charges to non-Medicare patients as well. The intent of LCC is that Medicare pay no more than the provider charges non-Medicare patients responsible for payment on a charge basis. The burden of ensuring an occupancy level sufficient to avoid the imposition of excessive charges rests with the provider. Thus, we believe that the elimination of the carryover provisions is appropriate because it will result in new providers either minimizing or avoiding LCC disallowances.

The comment that Medicare will be required to reimburse higher costs in the current year is correct if, as a result of the elimination of the carryover provisions, a provider increases its charges to a level in excess of costs to avoid LCC disallowances. In such cases, however, reasonable cost reimbursement still could not exceed the cost limits and other regulatory constraints on reasonable costs imposed pursuant to section 1861(v)(1)(A) of the Act and the regulations under 42 CFR

Part 413. In any event, the elimination of the carryover provisions would, consistently with Congressional intent, place Medicare patients in the same position as non-Medicare patients responsible for payment on a charge basis.

Comment: One commenter expressed opposition to the elimination of the carryover provisions for new facilities because it would discourage HHAs from entering the Medicare program, and thereby negatively affect beneficiaries' access to services. Also, the commenter stated that this change would affect Medicaid cost reporting and rates in those States adopting Medicare payment principles.

Response: As discussed in detail below in the Regulatory Impact Statement, HHAs represent the most rapidly growing provider type, having increased in number from 2,500 to approximately 6,000 since 1978. We do not believe that the elimination of the carryover provisions will significantly affect the number of new HHAs that choose to enter the Medicare program or indirectly limit beneficiaries' access to services. Therefore, we can see no compelling reason, even given the adoption by Medicaid of Medicare principles, to afford new providers a preferred reimbursement status. In addition, we believe this decision is consistent with our decision to eliminate the exception to the HHA cost limits for new agencies effective with cost reporting periods beginning on or after July 6, 1987. (See the June 4, 1987 final rule with comment period (52 FR 21216)).

Comment: Some commenters said that in a new provider or "new service" situation, a single year is not necessarily the appropriate period for measuring the level of cost and charges. They said that new providers have no history for accurately predicting their costs, are in a high-cost phase of their business life cycle, and yet, are limited in their charge structure by competitive forces in their service area. Therefore, it is common for new providers to have costs disallowed for the first several years since patient load is the element that brings the unit cost below the unit charge dictated by competition.

Response: The carryover provisions for new providers were established some time ago, when it was reasonable to believe the carryover period might lead to improved access to care as new providers entered the program. At this time, we do not believe it is necessary to give new providers preferred status because provider participation in the program has grown steadily through the years. Recognition of costs in excess of charges merely because a provider is "new" gives new providers an unnecessary competitive advantage, especially among HHAs, which require less initial expenditure than other providers and are greatly increasing their program participation.

Comment: One commenter stated that elimination of the carryover provisions discourages new providers and, in particular, small providers from participation in Medicare. The commenter claims that this policy has been undertaken to save money by reducing the number of HHAs.

Response: The provision of this final rule to eliminate the carryover provisions is applicable to all Medicare providers subject to LCC. No part of this provision discriminates against new providers, small providers, or any other specific type of provider.

C. Durable Medical Equipment Furnished by HHAs

Comment: A number of beneficiaries objected to our increasing their out-of-pocket expenses by charging coinsurance for DME furnished by HHAs.

Response: Sections 2321 (a), (b), and (c) of Pub. L. 98–369 amended sections 1814, 1833(a)(2), and 1866(a)(2)(A)(ii) of the Act, respectively, to require that the 20 percent coinsurance provisions apply to DME furnished as home health services. We are implementing the law as it was passed by the Congress.

D. Nominal Charges

Comment: One commenter asserted that the option permitted under section 2308(b)(1) of Pub. L. 98–369 to determine nominal charges separately for Part A and Part B services based on charges actually billed to charge-paying non-Medicare patients is impractical. The commenter stated that the nominal charges determination should be made separately solely for "inpatient and outpatient" services, as allowed under section 2308(b)(1), rather than for Part A and Part B services, because non-Medicare patients are not charged on the Part A and Part B basis.

Response: We agree with the commenter that the nominal charges determination should be made separately for inpatient and outpatient services based on charges actually billed to charge-paying non-Medicare patients rather than on a Part A and Part B basis (which would be impractical). However, if a provider fails to meet the nominal charge criteria for either the inpatient services component or the outpatient services component, the provider must apply an LCC determination for each category. In this situation, the intermediary will consider the inpatient and outpatient services used in the nominal charge determination by attributing inpatient services to represent Part A services and outpatient services to represent Part B services in determining the appropriate component subject to the LCC provisions.

Comment: One commenter requested that we provide information about the documentation, data, and frequency of requests that a provider is required to submit for determinations of nominal charges.

Response: We believe it is impractical and unnecessary to list such information in these regulations. Rather, we intend to notify providers and intermediaries through our administrative issuances system of the information we need to make a determination of nominal charges. Generally, a provider would be required to submit documentation each year to show that it qualifies for an exemption from the LCC provisions in § 413.13 because its customary charges are nominal. Furthermore, a nonpublic provider would need to demonstrate that it furnishes a significant portion of its services to low-income patients.

V. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, 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. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all Medicare providers of health care services as small entities.

The provisions contained in this rule are not expected to result in an annual economic impact of $100 million or more. However, it will affect a number of small and new providers. Those providers that would find it difficult to

compete under the final rule may view our final rule as having a significant adverse effect on competition. Therefore, we have prepared the following analysis, which is intended to conform to the objectives of E.O. 12291 and the RFA.

In the proposed rule published September 18, 1986 (51 FR 33078), we explained that while the elimination of the aggregation method would result in the greatest impact of all the proposed changes, the primary impact of the proposal would result from the requirements of section 2308(a) of Pub. L. 98-369 rather than the proposed rule. However, because the proposed elimination of the carryover provisions and the criteria for identifying nonpublic providers under the nominality provisions were not prescribed by statute and could have significantly affected a substantial number of small entities, we performed an initial regulatory flexibility analysis and a voluntary regulatory impact analysis. The effects of the changes to the DME and nominal charges provisions on Medicare program expenditures, and hence on providers, are negligible.

The proposed rule estimated savings from the elimination of the carryover provisions through FY 1989 (See 51 FR 33081). Those figures reflected savings from hospital services only and did not include HHAs or other providers. We have reestimated the savings effect, with the same limitations, as follows:

Fiscal year	Savings (in millions)
1988	-$10
1989	-30
1990	-30
1991	-30
1992	-30

We have determined that since these savings will help to ensure the integrity of the trust funds in future years, and at the same time encourage more responsible financial fiscal policies from providers, it is in the best interest of the Medicare program to eliminate the carryover provisions.

B. Entities Affected

Effective on or after October 1, 1982, the LCC principle is no longer applied to Part A (Hospital Insurance) coverage under the Medicare program. Under Part B, the hospitals with their comparatively large size and complex mix of services, are able to initiate changes to further reduce or avoid LCC disallowances for their outpatient services. Congress initially stated that it wanted to ensure against introducing "any incentive for providers to set charges for the general public at a level substantially higher than estimated costs merely to avoid being penalized by this [that is, the LCC] provision" H. Rep. No. 231, *SUPRA*. However, this concern is unwarranted because the LCC principle does not apply to hospitals subject to the ceiling on rate of hospital cost increases or hospitals subject to the prospective payment system, and such providers would have no incentive to artificially raise their charges. A consensus of the comments indicates that for these reasons hospitals would not be significantly affected by this final rule.

Comments were also in general agreement with our analysis in the proposed regulations stating that SNFs would not be affected significantly (see 51 FR 33080). We had stated that SNFs as a group have few LCC disallowances, and this was not contested.

The major area of concern for commenters was that the removal of the carryover provisions would have an adverse effect on HHAs and OPTs. In response to comments on this issue (see below), we have suggested that the data indicate that HHAs apparently have peaked in growth with more than half of all HHAs entering the Medicare program since 1978. Financial barriers for new HHAs entering the market are already limited because of the small capital investment needed for start up costs and recent adoption of more lenient licensure requirements for proprietary HHAs. On average, capital-related costs for an HHA represent less than three percent of its total operating costs.

As discussed below, we continue to believe that OPTs as a group also will not be affected significantly, although our basis for this has changed with further research prompted by commenters. OPTs traditionally maintain annual LCC disallowances, thereby disqualifying them for any reimbursement as a result of the carryover provisions. Their main problem is the inability to align cost and charge structures, and not the elimination of the carryover provisions.

C. Comments and Responses

Comment: One commenter stated that half of all HHAs nationally (more than 3,000) entered the program in 1982 or later. They are new providers that may be affected by elimination of the carryover provisions. The commenter characterized the estimate in Appendix II to the proposed rule as a four-year-old review of five-year-old cost reports of a 10 percent sample of HHAs then in existence. In that estimate, HCFA adjusted findings downward by 50 percent and concluded that total annual HHA carryover amounts ranged between $500,000 to $1.5 million. The commenter argued that this may underestimate current annual carryovers by $10 million to $15 million. Program reimbursement of HHAs more than doubled between fiscal year 1981 and fiscal year 1985.

Another commenter asked that we reconsider the elimination of the carryover provisions for HHAs because the small size of HHAs and the narrower mix of services do not give them the same level of opportunity to initiate changes to reduce or avoid LCC disallowances as hospitals, with their comparatively greater size and mix of services. Pointing out that both the preamble and Appendix II of the proposed rule stated that the data available were inadequate to predict with any confidence the estimated impact of the elimination of carryovers for HHAs, the commenter expressed the belief that the empirical evidence should be more substantial than that presented in the proposed rule before the carryover provisions are eliminated.

Response: In fact, more than half of all HHAs entered the Medicare program since 1978—nine years ago. The proposed rule indicated that the number of HHAs participating in the Medicare program grew from 2,500 in 1978 to over 5,000 HHAs in 1986. However, more recent data indicate that HHAs apparently have peaked at around 6,000, as indicated in the following chart:

Medicare-Certified HHAs

Dec. 1984	5,274
Sept. 1985	5,755
Jan. 1986	5,964
Mar. 1986	6,005
Apr. 1986	6,012
May, 1986	5,993

For the fiscal year ending with September 1985, 992 new HHAs had signed Medicare agreements and there were 392 voluntary terminations and one involuntary termination. Another 459 new agreements with 414 voluntary terminations and four involuntary terminations occurred in fiscal year 1986.

With respect to the latter comment, while it is true that HHAs and other providers do not have as great a variety of services as hospitals, it is also true that their startup costs are substantially less, and do not necessitate the level of capital investment that must be made by even a small hospital.

We agree that the 1982 sample selected was not scientifically chosen and therefore we were unable to generalize the findings. However, the

rationale for adjusting the findings downward by 50 percent was based on other program data that were used as part of a program validation initiative and that suggested that the original sample was overstated. We are confident based on this supplemental data that our findings are reflective of the general magnitude of the impact on HHAs of this final rule. That magnitude would now be even less than at the time this rule was proposed, since we subsequently ended the exception to our cost limits for new HHAs. As a result, LCC disallowances will not be as large as heretofore.

Comment: Commenters stated that HCFA apparently does not have good data on what effect the elimination of the carryover provisions would have on providers other than hospitals and HHAs. Whereas HCFA's proposed rule stated that few SNFs and outpatient rehabilitation agencies experience LCC disallowances, more than 50 percent of the outpatient rehabilitation agencies (outpatient physical therapy and speech pathology clinics (OPTs) that are independent entities) serviced by a Medicare intermediary in Florida are reimbursed 100 percent of charges. This would appear to indicate that many rehabilitation agencies have LCC disallowances and would be severely affected by the elimination of the carryover provisions.

Response: Further investigation indicates that it is true that more than 50 percent of rehabilitation agencies in certain areas of Florida are reimbursed 100 percent of charges as stated by the commenter. However, these agencies have an historical pattern of recurring LCC disallowances that precludes them from being eligible for reimbursement under the carryover provisions. We believe this to be a problem of aligning cost and charge structures. Our information does not indicate that their situation would be significantly worsened by the elimination of the carryover provisions.

D. Conclusion

The majority of the commenters recommended that we not eliminate the carryover provision because it will have a significant impact on small providers, specifically new HHAs. The majority of these comments were based on the claim that small providers would experience more difficulties because of their narrower mix of services, relatively large capital expenditures, difficulty in competing with larger entities (hospitals), and the difficulty of financial startup costs. However, we are not dissuaded by the commenters.

As we noted in a final rule published June 4, 1987 (52 FR 21223) concerning elimination of the exception for newly established HHAs from the cost limits, evidence acquired during the past few years concerning the changing composition of HHAs suggests that obtaining financing for start-up costs may no longer be a significant obstacle to entering the market place. This is supported by the fact that by the end of FY 1985, 81.1 percent of all new HHAs certified by the Medicare program were either hospital-based or proprietary, which strongly suggests that these agencies have access to alternative sources of financing that are not available to the nonprofit agencies that previously dominated the industry. It is expected that eight out of ten agencies will continue to be hospital-based or proprietary in the future. Entry of new HHAs into the industry is also easier now because the slight capital investment required for start-up costs makes it easier for new freestanding and nonprofit agencies to begin operations. We believe that the nature of home health services enables HHAs to adopt flexible staffing and maintain minimal fixed assets, resulting in more control over their costs in the early years than is possible for hospitals. We do not believe that there is a substantial obstacle preventing HHAs from better aligning their costs and charge structures and thereby avoiding LCC disallowances. We also note that providers, including HHAs, will be exempt from the LCC principle, and thus will experience no disallowances, if they meet the nominal charge provision by providing services to a significant portion of low-income patients.

As stated above, our most recent data on HHAs indicate that, during FY 1986, there were 459 new Medicare HHA agreements and 414 voluntary terminations. These data suggest that the carryover provisions, which were then in effect, and the perpetuation of a new HHA are not necessarily related. New HHAs frequently fail, perhaps as a result of competition or adverse conditions in the marketplace, but apparently not because the carryover provisions may or may not be applicable.

VI. Other Required Information

Paperwork Reduction Act

This rule would not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

List of Subjects in 42 CFR Part 413

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

We are amending 42 CFR Part 413 as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT: PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 13951(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. Section 413.13 is revised to read as follows:

§ 413.13 Amount of payment if customary charges for services furnished are less than reasonable costs.

(a) *Definitions.* As used in this section—

"Fair compensation" means, for the purpose of providers that meet the nominal charge provisions in paragraph (f) of this section, the reasonable cost of covered services furnished to beneficiaries.

"New provider" means a provider that has operated as the type of facility for which it has been approved for participation in the Medicare program (for example, as a SNF or an HHA) under present and previous ownership for less than three full years.

"Provider with a significant portion of low-income patients" means a nonpublic provider whose charges are 60 percent or less of the reasonable cost represented by the charges, and that demonstrates, as required under paragraph (c)(1)(iii) of this section, that its charges are less than costs because its customary practice is to charge patients based on their ability to pay.

"Public provider" means a provider operated by a Federal, State, county, city, or other local government agency or instrumentality.

(b) *Application of the principle of lesser of costs or charges*—(1) *General rule.* Except as provided in paragraph (c) of this section, effective with cost reporting periods beginning on or after January 1, 1974, hospitals, SNFs, HHAs, and OPTs are paid the lesser of the reasonable cost (as described in paragaraph (d) of this section) of covered services furnished to

beneficiaries or the customary charges (as defined in paragraph (e) of this section) made by the provider for the same services. The carryover of unreimbursed reasonable costs from previous cost reporting periods is recognized, in accordance with the provisions of paragraph (h) of this section.

(2) *Example.* A provider's reasonable cost for covered services furnished to Medicare beneficiaries during a cost reporting period is $125,000. The customary charges to those beneficiaries for these services is $110,000. The provider is to be reimbursed $110,000 less deductible and coinsurance amounts that the beneficiaries are charged.

(c) *Providers and services not subject to the principle*—(1) *Providers.*—(i) *CORFs.* Payment to CORFs is based on the reasonable cost of the services.

(ii) *Public providers.* Public providers furnishing services free of charge or at a nominal charge (as specified in paragraph (f) of this section) are paid fair compensation for services furnished to beneficiaries.

(iii) *Providers furnishing services to a significant portion of low-income patients.* Effective with cost reporting periods beginning on or after October 1, 1984, a provider furnishing services at a nominal charge (as specified in paragraph (f) of this section) is paid fair compensation, upon request, for services furnished to beneficiaries if the provider can demonstrate to its intermediary that a significant portion of its patients are low income and that its customary practice is to charge patients based on their ability to pay.

(2) *Services*—(i) *Part A inpatient hospital services.* The lesser of costs or charges principle does not apply to Part A inpatient hospital services subject to—

(A) The rate-of-increase limits under § 413.40, effective with cost reporting periods beginning on or after October 1, 1982; or

(B) The prospective payment system under Part 412 of this chapter, effective with cost reporting periods beginning on or after October 1, 1983.

(ii) *Special rule for facility services related to ambulatory surgical procedures performed in outpatient hospital departments.* Effective for hospitals with cost reporting periods beginning on or after October 1, 1987, reasonable costs and customary charges for those services relating to ambulatory surgical procedures that are subject to the payment methodology described in § 413.118 are aggregated and treated separately from all other hospital costs and charges incurred during the cost reporting period.

(iii) *Durable medical equipment furnished by HHAs*—(A) *General.* Except as provided in paragraph (c)(2)(iii)(B) of this section, for durable medical equipment furnished by an HHA as a home health service on or after July 18, 1984, the HHA is paid the lesser of the reasonable cost of the equipment or the customary charges (less a 20 percent coinsurance as provided in section 1866(a)(2)(A)(ii) of the Act), not to exceed 80 percent of the reasonable cost of the equipment. The lesser of cost or charges determination for durable medical equipment is made separately from all other items or services furnished in an HHA regardless of whether the equipment is furnished under Part A or Part B.

(B) *HHAs meeting the nominal charge provisions.* A public HHA, or an HHA that demonstrates that a significant portion of its patients are low-income patients under the nominal charge provisions, as provided in paragraph (f)(2) of this section, are paid 80 percent of fair compensation for durable medical equipment furnished as a home health service on or after July 18, 1984.

(d) *Exclusions from reasonable cost.* For purposes of comparison with customary charges under this section, reasonable cost does not include—(1) Payments made to a provider as reimbursment for bad debts arising from noncollection of Medicare deductible and coinsurance amounts (§ 413.80);

(2) Amounts that represent the recovery of excess depreciation resulting from termination in the Medicare program or a decrease in Medicare utilization (§ 413.134(d)(3)) applicable to prior cost reporting periods;

(3) Amounts that result from a disposition of depreciable assets (§ 413.134(f)) applicable to prior cost reporting periods; and

(4) Payments to funds for the donated services of teaching physicians (§ 413.85).

(e) *Customary charges*—(1) *General.* As used in this paragraph (e), customary charges means the charges for services, as defined in § 413.53(b), furnished to beneficiaries. These charges must be recorded on all bills submitted for program reimbursement.

(2) *Special situations in which customary charges are reduced.* Customary charges are reduced in proportion to the ratio of the aggregate amount actually collected from charge-paying non-Medicare patients to the amount that would have been realized had customary charges been paid and the provider—

(i) Did not actually impose charges in the case of most patients liable for payment for its services on a charge basis; or

(ii) Failed to make a reasonable effort to collect those charges.

(f) *Nominal charges.*—(1) *Cost reporting periods beginning before October 1, 1984.* Except for durable medical equipment furnished by HHAs as provided in paragraph (c)(2)(iii) of this section, if a public provider's total charges, for cost reporting periods beginning before October 1, 1984, are less than one-half of the reasonable cost of services or items represented by these charges, then the provider is reimbursed fair compensation.

(2) *Cost reporting periods beginning on or after October 1, 1984.* For cost reporting periods beginning on or after October 1, 1984, the following provisions apply in determining nominal charges:

(i) *Reimbursement of fair compensation.* Except for the limitations on reimbursement for durable medical equipment furnished by HHAs as provided in paragraph (c)(2)(iii) of this section, public providers, and providers with a significant portion of low-income patients that request payment under this paragraph are reimbursed fair compensation if total charges are 60 percent or less of the reasonable cost of services or items represented by these charges.

(ii) *Separate determination of nominal charges.* Except as provided in paragraph (f)(2)(iii) of this section, the determination of nominal charges, which is based on charges actually billed to charge-paying, non-Medicare patients, is made separately with respect to inpatient and outpatient services (other than clinical diagnostic laboratory tests that are paid under section 1833(h) of the Act).

(iii) *Determination of nominal charges in special situations.* (A) For providers that have a sliding scale or discounted schedule of charges based on patients' ability to pay, the determination of nominal charges is based on charges billed to all charge-paying patients. This determination is made using the ratio of sliding scale or discounted charges to the provider's full customary charges. For determining nominal charges, the ratio is applied to the provider's Medicare charges to equate those charges to customary charges.

(B) For HHAs, the determination of nominal charges for all items and services other than durable medical equipment is made on an aggregate basis. The nominal charge determination for durable medical equipment is made

separately from other items or services furnished by HHAs.

(g) *The aggregation method*—(1) *Cost reporting periods beginning before October 1, 1984—Application.* In comparing costs and charges under the lesser of costs or charges principle for cost reporting periods beginning before October 1, 1984, the reasonable cost for items and services and the customary charges for those same items and services are to be aggregated (that is, totalled and compared) without regard to whether the services are reimbursable under Part A or Part B of Medicare. This aggregation method is to be applied after the provider's charges and costs have been adjusted to exclude the amounts described in paragraph (d) of this section and to exclude—

(i) Any amounts attributable to physican services not reimbursable to the provider on a reasonable cost basis as described in §§ 405.480 through 405.482 of this chapter; and

(ii) All costs and charges for noncovered provider services.

(2) *Cost reporting periods beginning on or after October 1, 1984.* Effective with cost reporting periods beginning on or after October 1, 1984, the aggregation method used for computing the lesser of costs or charges, as set forth in paragraph (g)(1) of this section, may not be used. For covered items and services furnished during these periods, total reasonable cost of covered items and services is compared with total customary charges for those items and services, separately for Part A and for Part B.

(h) *Accumulation of unreimbursed costs and carryover to subsequent periods*—(1) *General rule.* A provider whose charges are lower than its reasonable cost for those services in any cost reporting period beginning on or after January 1, 1974 but before April 28, 1988, may carry forward costs that are unreimbursed under paragraph (b) of this section for the two succeeding cost reporting periods. However, no recovery may be made in any period in which costs are unreimbursed because a provider's costs exceed the limitations on reimbursable costs (§ 413.30) or the ceiling on the rate of hospital cost increases (§ 413.40).

(2) *Reimbursement as a result of carryover.* The provider is reimbursed for the costs that are carried forward to a succeeding cost reporting period—

(i) If total charges for services provided in that subsequent period exceed the total reasonable cost of the services; and

(ii) To the extent that accumulation of the costs being carried forward and the costs for the services provided in that subsequent period do not exceed the customary charges for those services.

(3) *Two succeeding periods less than 24 months.* If the two succeeding cost reporting periods are less than 24 full calendar months, the provider may carry forward the unreimbursed costs for one additional cost reporting period.

(4) *Example.* In the cost reporting period ending September 30, 1982, a provider's reasonable costs were $100,000. The provider's customary charges for those services were $90,000. The provider is reimbursed $90,000 less any deductible and coinsurance amounts but is permitted to carry forward the unreimbursed reasonable costs of $10,000 for the next two succeeding cost reporting periods. If, in the cost reporting period ending September 30, 1983, customary charges to beneficiaries exceeded the reasonable costs for those services by $10,000 or more, and the provider had no costs unreimbursed under § 413.30 or § 413.40, the provider would recover the entire $10,000 previously not reimbursed. If, however, beneficiary charges for that cost reporting period exceeded costs by only $8,000, this amount ($8,000) would be added to the provider's reimbursable costs for this period. The balance of the unreimbursed amount ($2,000) would be carried forward to the next cost reporting period.

(5) *New providers*—(i) *General rule.* A new provider whose cost reporting period begins before April 28, 1988, may carry forward costs that are unreimbursed from previous periods, as described in paragraph (b) of this section, during a provider's base period. The base period includes any cost reporting period beginning on or after January 1, 1974, and ending on or before the last day of its third year of operation. The unreimbursed costs may be carried forward for the five succeeding cost reporting periods. However, no recovery may be made in any period in which costs are unreimbursed because a provider's costs exceed the limitations on reimbursable costs (§ 413.30) or the ceiling on the rate of hospital cost increases (§ 413.40).

(ii) *Reimbursement as a result of carryover.* The new provider is reimbursed for the costs that are carried forward to a succeeding cost reporting period—

(A) If total charges for the services provided in that subsequent period exceed the total reasonable cost of the services; and

(B) To the extent that accumulation of the costs being carried forward and the costs for the services provided in that subsequent period do not exceed the customary charges for those services.

(iii) *Five succeeding periods less than 60 months.* If the five succeeding cost reporting periods are less than 60 full calendar months, the provider may carry forward the unreimbursed costs for one additional cost reporting period.

(iv) *Example.* A provider begins its operations on March 5, 1972. However, it begins to participate in the Medicare program as of January 1, 1973, and reports on a calendar year basis. Because the provider would be subject to the lesser of cost or charges principle for its cost reporting period beginning with January 1, 1974, it would be permitted to accumulate any unreimbursed costs (excess of costs over its charges) incurred during this reporting period. Therefore, because this cost reporting period ends before the end of the third year of operation, its carryover period would be the succeeding five cost reporting periods ending with December 31, 1979. If this provider had begun its operation on July 1, 1973, and become a participating provider as of the same date (with a fiscal year ending June 30), it would have been able to accumulate any unreimbursed costs for the two cost reporting periods ending June 30, 1975, and June 30, 1976. Its carryover period would then be the five cost reporting periods ending no later than June 30, 1981, in the case of costs unreimbursed in either of the reporting periods ending June 30, 1975, or June 30, 1976.

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

Dated: December 21, 1987.

William L. Roper

Administrator, Health Care Financing Administration.

Approved: January 25, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-6833 Filed 3-28-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6782]

List of Communities Eligible for the Sale of Flood Insurance; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

EFFECTIVE DATES: The dates listed in the third column of the table.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

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

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

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Arkansas: Sedgwick, town of Lawrence County	050576	Feb. 1, 1988, Emerg	
Oklahoma: Washington County, unincorporated areas	400459	Do. Emerg	
Pennsylvania:			
Conneautville, borough of Crawford County	420349	May 28, 1975, Emerg.; Sept. 18, 1987, Reg.; Sept. 18, 1987, Susp.; Feb. 8, 1988, Rein.	Sept. 18, 1987
Foxburg, borough of Clarion County	421502	Feb. 28, 1977, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; Feb. 8, 1988, Rein.	Sept. 30, 1987
Rouseville, borough of Venango County	420839	July 11, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp.; Feb. 8, 1988, Rein.	June 19, 1987
Tennessee: Gordonsville, town of, Smith County [1]	470395	Feb. 10, 1988, Emerg.; Feb. 10, 1988, Reg	
California: Orinda, city of, Contra Costa County	060722	Feb. 10, 1988, Emerg.; Feb. 10, 1988, Reg	Jan. 6, 1988
Iowa: Donahue, city of, Scott County	190505	Feb. 10, 1988, Emerg	Mar. 19, 1976
Massachusetts: Middlefield, town of, Hampshire County	250166	Jan. 22, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.; Feb. 10, 1988, Rein	Jan. 3, 1986
Pennsylvania:			
Washington, township of, Dauphin County	421598	Jan. 20, 1976, Emerg.; Dec. 17, 1987, Reg.; Dec. 17, 1987, Susp.; Feb. 10, 1988, Rein.	Dec. 17, 1987
Upper Uwchlan, township of, Chester County	421491	Mar. 10, 1976, Emerg.; Aug. 19, 1985, Reg.; Aug. 19, 1985, Susp.; Feb. 16, 1988, Rein.	Aug. 19, 1985
Kentucky: Milton, city of, Trimble County	210215	May 29, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.; Feb. 16, 1988, Rein.	Sept. 18, 1986
Michigan: Port Huron, township of, St. Clair County	260672	Feb. 22, 1988, Emerg	Oct. 29, 1976
Oregon: Culver, city of, Jefferson County	410290	Feb. 18, 1988, Emerg.; Feb. 18, 1988, Reg	Sept. 4, 1987
Texas:			
Cut and Shoot, town of, Montgomery County	481279	Feb. 22, 1988, Emerg.; Feb. 22, 1988, Reg	Feb. 1, 1984
Lakeway, village of, Travis County	481303	June 27, 1977, Emerg.; Nov. 5, 1980, Reg.; Nov. 5, 1980, Susp.; Feb. 22, 1988, Rein.	Nov. 5, 1980
New York: *Edmeston, town of, Otsego County	361270	Sept. 30, 1987, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; Feb. 18, 1988, Rein.	June 1, 1987
Kentucky: Grayson, city of, Carter County	210051	July 10, 1975, Emerg.; Aug. 16, 1982, Reg.; Feb. 4, 1988, Susp.; Feb. 22, 1988, Rein.	Aug. 16, 1982
Florida: Coconut Creek, city of, Broward County	120031	Apr. 17, 1974, Emerg.; Apr. 2, 1979, Reg.; Feb. 4, 1988, Susp.; Feb. 24, 1988, Rein.	Apr. 2, 1979
North Carolina: *Edenton, town of, Chowan County	370062	Nov. 14, 1973, Emerg.; Sept. 15, 1977, Reg.; Feb. 4, 1988, Susp.; Feb. 26, 1988, Rein.	July 3, 1985
Michigan: Logan, township of, Mason County	260811	Feb. 29, 1988, Emerg	
New Jersey: Barrington, borough of, Camden County	340579-New	Do. Emerg	

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Arkansas: Maumelle, city of, Pulaski County [2]	050577-New	Mar. 6, 1979, Emerg.; July 16, 1981, Reg	
Florida: Clewiston, city of, Hendry County	120108	Sept. 29, 1972, Emerg.; Mar. 15, 1977, Reg.; Feb. 4, 1988, Susp.; Feb. 29, 1988, Rein.	Mar. 15, 1977
Region III—Regular Conversions			
Pennsylvania: Hatfield, township of, Montgomery County	420699	February 4, 1988, suspension withdrawn	Feb 4, 1988.
Region IV			
Georgia: Jesup, city of, Wayne County	130188	do	Do.
Region V			
Ohio:			
Belmont County, unincorporated areas	390762	do	Do.
Brookside, village of, Belton County	390027	do	Do.
Region VI			
Louisiana: Iowa, town of, Calcasieu Parish	220039	do	Do.
Texas: Arlington, city of, Tarrant County	485454	do	Do.
Region VII			
Kansas: Geary County, unincorporated areas	200579	do	Do.
Nebraska: Saline County, unincorporated areas	310472	do	Do.
Region VIII			
Utah: Duchesne, city of, Duchesne County	490055	do	Do.
Region IX			
California:			
Stockton, city of, San Joaquin County	060302	do	Do.
Sacramento, city of, Sacramento County	060266	do	Do.
Region VIII—Minimal Conversions			
Utah: Myton, city of, Duchesne County	490056	do	Do.
Region I—Regular Conversions			
Maine:			
Fairfield, town of, Somerset County	230125	Feb. 17, 1988, suspension withdrawn	Feb 17, 1988.
Waterville, city of, Kennebec County	230070	do	Do.
Massachusetts: Marion, town of, Plymouth County	255213	do	Do.
Region III			
Pennsylvania: Chestnuthill, township of, Monroe County	421885	do	Do.
Region IV			
South Carolina: Clemson, city of, Anderson County	450238	do	Do.
Tennessee:			
Fayetteville, city of, Lincoln County	470105	do	Do.
Lewisburg, city of, Marshall County	470121	do	Do.
Marshall County, unincorporated areas	470119	do	Do.
Mount Pleasant, city of, Maury County	470125	do	Do.
Region V			
Michigan: Blissfield, village of, Lenawee County	260339	do	Do.
Region VII			
Kansas: Pottawatomie County, unincorporated areas	200621	do	Do.
Region IX			
Nevada: Lincoln County, unincorporated areas	320014	do	Do.
Oregon:			
Enterprise, city of, Wallowa County	410225	do	Do.
Joseph, city of, Wallowa County	410226	do	Do.
Wallowa, city of, Wallowa County	410228	do	Do.
Wallowa County, unincorporated areas	410224	do	Do.
Jefferson County, unincorporated areas	160214	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IX—Minimal Conversions			
Oregon: Lostine, city of, Wallowa County	410227	....do....	Do.

[1] The Town of Gordonsville has adopted by reference Smith County's FIRM for floodplain management and insurance purposes. Smith County's FIRM date is April 15, 1981.

[2] The City of Maumelle (Pulaski County) is a newly incorporated community that was participating in the Regular Program as an unincorporated area of Pulaski County. The City has adopted by reference the county's FIRM for floodplain management and insurance purposes. Pulaski County's current FIRM effective date is 11-16-86.

*Minimal Conversions.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,

Federal Insurance Administration.

Issued: March 23, 1988.

[FR Doc. 88-6760 Filed 3-28-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6784]

Suspension of Community Eligibility; North Carolina

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: April 5, 1988.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting live and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Offie or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a

significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

Lists of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

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

Authority: 42 U.S.C. 40001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

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

§ 64.6 List of Eligible Communities.

State	Community name	County	Community No.	Effective date
North Carolina	Unincorporated areas	Burke	370034	Apr. 5, 1988.
Do	Charlotte, city of	Mecklenburg	370159	Do.
Do	Gastonia, city of	Gaston	370100	Do.
Do	Harrisburg, town of	Cabarrus	370038	Do.
Do	Indian Trail, town of	Union	370235	Do.
Do	Kings Mountain, city of	Cleveland	370304	Do.
Do	Long View, town of	Catawba	370055	Do.
Do	Maiden, town of	Catawba	370056	Do.
Do	Unincorporated areas	Mecklenburg	370158	Do.
Do	Mount Holly, city of	Gaston	370102	Do.
Do	Spencer, town of	Rowan	370216	Do.
Do	Wingate, town of	Union	370365	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: March 23, 1988.

[FR Doc. 88-6762 Filed 3-28-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6781]

Suspension of Community Eligibility; Pennsylvania et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster

Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

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

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

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

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region III—Minimal Conversions				
Pennsylvania:				
Dallas, township of, Luzerne County	420602	Sept. 5, 1973, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Larimer, township of, Somerset County	422515	Sept. 8, 1983, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
West Virginia:				
Capon Bridge, town of, Hampshire County	540046	May 13, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Hundred, town of, Wetzel County	540256	July 10, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Lester, town of, Raleigh County	540171	May 13, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Pine Grove, town of, Wetzel County	540210	July 16, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Smithfield, town of, Wetzel County	540258	Nov. 5, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
West Milford, town of, Harrison County	540062	Sept. 25, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Virginia: Berryville, town of, Clarke County	510037	Mar. 17, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Region II—Regular Program Conversions				
New York: Annsville, town of, Oneida County	360516	June 9, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Apr. 5, 1988.
Region III				
Pennsylvania:				
Cranberry, township of, Venango County	422109	July 7, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
East Franklin, township of, Armstrong County	421305	Apr. 22, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Londonderry, township of, Chester County	421484	Feb. 11, 1983, Emerg.; Sept. 24, 1984, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Kiskiminetas, township of, Armstrong County	421209	Feb. 28, 1977, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Parks, township of, Armstrong County	421311	Feb. 13, 1976, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Upper Frankford, township of, Cumberland County	421588	Aug. 22, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Honaker, town of, Russell County	510321	Feb. 21, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region IV				
Alabama: Cottonwood, town of, Houston County	010102	Dec. 24, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region V				
Illinois: Ogle County, Unincorporated areas	170525	Aug. 17, 1973, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region VI				
Louisiana:				
Catahoula Parish, Unincorporated areas	220047	Apr. 26, 1973, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Harrisonburg, village of, Catahoula Parish	220048	Apr. 26, 1973, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region VIII				
North Dakota: Tioga, city of, Williams County	380147	June 25, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region IX				
California:				
Solano County, Unincorporated areas	060631	Mar. 23, 1979, Emerg.; Aug. 2, 1982, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Sutter County, Unincorporated areas	060394	Oct. 9, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region X				
Idaho:				
Boise County, Unincorporated areas	160205	Oct. 14, 1982, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Idaho City, city of, Boise County	160222	Mar. 29, 1978, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Oregon:				
Dallas, city of, Polk County	410187	June 18, 1974, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Independence, city of, Polk County	410189	June 21, 1974, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Monmouth, city of, Polk County	410190	Oct. 15, 1974, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Polk County, Unincorporated areas	410186	Dec. 10, 1971, Emerg.; Feb. 15, 1978, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region II—Regular Program Conversions				
New York: Vernon, village of, Oneida County	360560	Oct. 6, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Apr. 15, 1988.
Region III				
Delaware: Newark, city of, New Castle County	100025	June 5, 1970, Emerg.; Mar. 29, 1974, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Region V				
Illinois:				
Amboy, city of, Lee County	170414	Apr. 8, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Dixon, city of, Lee County	170417	Mar. 3, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Evansville, village of, Randolph County	170577	June 25, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Lee County, Unincorporated areas	170413	June 6, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Nelson, village of, Lee County	170418	Sept. 30, 1976, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Region VIII				
Wyoming: Ranchester, town of, Sheridan County	560046	May 8, 1978, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Region IX				
Arizona:				
Avondale, city of, Maricopa County	040038	Aug. 25, 1975, Emerg.; June 15, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Carefree, city of, Maricopa County	040126	Dec. 31, 1970, Emerg.; July 2, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
El Mirage, town of, Maricopa County	040041	Aug. 8, 1975, Emerg.; Dec. 1, 1978, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Gila Bend, town of, Maricopa County	040043	May 16, 1975, Emerg.; Dec. 4, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Glendale, city of, Maricopa County	040045	Mar. 20, 1975, Emerg.; Apr. 16, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Good Year, town of, Maricopa County	040046	Aug. 8, 1975, Emerg.; July 16, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Mesa, city of, Maricopa County	040048	Sept. 29, 1972, Emerg.; May 15, 1980, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-6761 Filed 3-28-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-203; RM-5799]

Radio Broadcasting Services; Folly Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Charleston County Wireless Company, substitutes Channel 251C2 for Channel 249A at Folly Beach, South Carolina, and modifies its permit for Station WCCG to specify operation on the higher powered channel. Channel 251C2 can be allocated to Folly Beach in compliance with the Commission's minimum distance separation requirements and can be used at Station WCCG's present transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-203, adopted February 23, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transportation Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Folly Beach, South Carolina, is amended by removing Channel 249A and adding Channel 251C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6772 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-363; RM-5838]

Radio Broadcasting Services; Hampton, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harold A. Jahnke, allocates Channel 255A to Hampton, Iowa, as the community's second local FM service. Channel 255A can be allocated to Hampton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATE: Effective May 2, 1988. The window period for filing applications will open on May 3, 1988, and close on June 2, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-363, adopted February 11, 1988, and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Hampton, Iowa, by adding Channel 255A.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88-6770 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-80; RM-5583; RM-5942]

Radio Broadcasting Services; Kingstree and McClellanville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Joseph Papp, III, allocates Channel 255C2 to McClellanville, South Carolina, as the community's first local FM service. Channel 255C2 can be allocated to McClellanville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. This document also denies the request of Davidson Communications, Inc. to substitute Channel 255C2 for Channel 252A at Kingstree, South Carolina, and the modification of its license for Station WWKT-FM to specify the higher powered channel. The Commission found that the allocation of a first local channel to McClellanville would better serve the public interest than the upgrading of a second local service at Kingstree. With this action, this proceeding is terminated.

DATES: Effective May 5, 1988. The window period for filing applications will open on May 6, 1988, and close on June 6, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-80, adopted February 23, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by adding McClellanville, Channel 255C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 88-6771 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1104, 1111, 1113, 1118, 1130, 1131, 1132, 1136, 1137, 1139, 1143, 1150, 1152, 1154, 1161, 1162, 1169, 1170, 1182, 1183, 1185, 1186, and 1331

[Ex Parte No. 471]

Commission Proceedings; Filings of Pleadings, Applications, etc.; Copy Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts rules to specify a uniform number of copies of pleadings and other documents to be filed in Commission proceedings. The number of required copies now ranges from 1 to 24. The Commission has determined that in most proceedings it requires an original and 10 copies of each pleading, application, or other document to ensure that sufficient copies are available for its use. Therefore, we are revising our rules at 49 CFR Part 1104 governing pleadings to provide that, unless otherwise specified with respect to particular types of documents, an original and 10 copies of every pleading, application, or document should be filed with the Commission. No comments are required or sought because these amendments to our rules are ministerial in nature.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT:
Suzanne Higgins O'Malley, (202) 275-7292
or
Richard B. Felder, (202) 275-7691
[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428. (assistance for the hearing impaired is available through TDD services (202) 275-1721).

Environmental and Energy Considerations

These rule revisions will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that these rule revisions will not have a significant economic impact on a substantial number of small entities. The involved changes are ministerial only and do not impose additional substantive requirements on any entity. To a limited extent, the increased number of copies required could entail additional effort and expense by parties before the Commission. However, the alternative—that the government absorb this expense—is not satisfactory.

List of Subjects

49 CFR Parts 1104, 1113, 1118, 1130, and 1132

Administrative practice and procedure.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1131

Administrative practice and procedure, Investigations, Railroads.

49 CFR Part 1136

Administrative practice and procedure, Buses, Motor carriers, Railroads.

49 CFR Parts 1137 and 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1139

Administrative practice and procedure, Buses, Freight, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1143

Administrative practice and procedure, Buses, Intergovernmental relations.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts, Abandonments and discontinuances, Investigations, Public use conditions.

49 CFR Part 1154

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1161, 1182, and 1183

Administrative practice and procedure, Motor carriers.

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

49 CFR Part 1169

Administrative practice and procedure, Buses.

49 CFR Part 1170

Administrative practice and procedure, Buses, Employment.

49 CFR Part 1185

Administrative practice and procedure, Antitrust, Railroads.

49 CFR Part 1186

Administrative practice and procedure, Freight, Motor carriers.

49 CFR Part 1331

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

Decided: January 20, 1988.

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

Noreta R. McGee,

Secretary.

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

PART 1104—[AMENDED]

1. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1104.3 [Amended]

2. In § 1104.3 the numeral "6" in paragraph (a) is revised to read "10."

3. In § 1104.3 the words "one copy" in paragraph (b) are revised to read "10 copies."

PART 1111—[AMENDED]

4. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1111.3 [Amended]

5. In § 1111.3 the numeral "6" is revised to read "10."

§ 1111.4 [Amended]

6. In § 1111.4 the word "six" in paragraph (b) is revised to read "10."

PART 1113—[AMENDED]

7. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C 559.

§ 1113.7 [Amended]

8. In § 1113.7 the words "one additional copy" and "three copies" in paragraph (e) are revised to read "10 copies."

§ 1113.12 [Amended]

9. In § 1113.12 the words "one copy" in paragraph (a) are revised to read "10 copies."

§ 1113.13 [Amended]

10. In § 1113.13 the words "one copy" are revised to read "10 copies."

PART 1118—[AMENDED]

11. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1118.4 [Amended]

12. In § 1118.4 the word "six" in paragraph (b) is revised to read "10."

PART 1130—[AMENDED]

13. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 553 and 559.

§ 1130.2 [Amended]

14. In § 1130.2 the word "six" in the last sentence of paragraph (f) is revised to read "10."

PART 1131—[AMENDED]

15. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11701; 5 U.S.C. 559.

§ 1131.8 [Amended]

16. In § 1131.8 the word "six" is revised to read "10."

§ 1131.9 [Amended]

17. In § 1131.9 the word "six" in paragraph (b) is revised to read "10."

PART 1132—[AMENDED]

18. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10707, 10708, and 10726; 5 U.S.C. 553 and 559.

§ 1132.1 [Amended]

19. In § 1132.1 the numeral "11" and the word "six" in paragraph (d) are revised to read "10."

§ 1132.2 [Amended]

20. In § 1132.2 the numeral "15" and the word "six" in paragraph (b) are revised to read "10."

PART 1136—[AMENDED]

21. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10707, and 10708; 5 U.S.C. 559.

§ 1136.2 [Amended]

22. In § 1136.2 the numeral "24" is revised to read "10."

PART 1137—[AMENDED]

23. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10705, and 10728; 5 U.S.C. 553, 559.

§ 1137.1 [Amended]

24. In § 1137.1 the numeral "15" in paragraphs (a)(1) and (d) is revised to read "10."

PART 1139—[AMENDED]

25. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10708; 5 U.S.C. 553 and 559.

§ 1139.7 [Amended]

26. In § 1139.7 the numeral "16" is revised to read "10."

PART 1143—[AMENDED]

27. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10501(e), and 5 U.S.C. 553.

§ 1143.5 [Amended]

28. In § 1143.5 the numeral "12" and the word "six" are revised to read "10."

PART 1150—[AMENDED]

29. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10326, 10901, and 10505; 5 U.S.C. 553.

§ 1150.10 [Amended]

30. In § 1150.10 the word "five" in paragraphs (b) and (g) is revised to read "10."

PART 1152—[AMENDED]

31. The authority citation in this part continues to read:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

§ 1152.24 [Amended]

32. In § 1152.24 the word "six" in paragraph (a) is revised to read "10."

§ 1152.25 [Amended]

33. In § 1152.25 the numeral "2" in paragraphs (c)(2) and (4) is revised to read "10."

§ 1152.40 [Amended]

34. In § 1152.40 the word "six" in paragraph (b) is revised to read "10."

§ 1152.42 [Amended]

35. In § 1152.42 the word "six" in paragraph (a) is revised to read "10."

PART 1154—[AMENDED]

36. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

§ 1154.6 [Amended]

37. In § 1154.6 the numeral "15" in paragraph (a) is revised to read "10."

PART 1161—[AMENDED]

38. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10931; 5 U.S.C. 559.

§ 1161.5 [Amended]

39. In § 1161.5 the word "six" is revised to read "10" in both places it appears.

PART 1162—[AMENDED]

40. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 10928; 5 U.S.C. 559.

§ 1162.2 [Amended]

41. In § 1162.2 the word "two" in paragraph (b) is revised to read "10" in both places it appears.

§ 1162.3 [Amended]

42. In § 1162.3 the word "two" in paragraph (a)(2) is revised to read "10."

§ 1162.6 [Amended]

43. In § 1162.6 the word "two" in paragraph (c) is revised to read "10."

PART 1169—[AMENDED]

44. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.6 [Amended]

45. In § 1169.6 the word "two" in paragraph (b) is revised to read "10."

§ 1169.23 [Amended]

46. In § 1169.23 the word "two" in paragraph (a) is revised to read "10."

§ 1169.32 [Amended]

47. In § 1169.32 the word "two" is revised to read "10."

PART 1170—[AMENDED]

48. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 5 U.S.C. 553 and Pub. L. 97–261, sec. 27.

§ 1170.3 [Amended]

49. In § 1170.3 the words "one copy" in paragraph (e) are revised to read "10 copies."

§ 1170.7 [Amended]

50. In § 1170.7 the words "one copy" in paragraph (c) are revised to read "10 copies."

PART 1182—[AMENDED]

51. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11343, 11344 and 11345(a); 5 U.S.C. 559.

§ 1182.1 [Amended]

52. In § 1182.1 the word "two (2)" in paragraph (e)(1) is revised to read "10."

§ 1182.2 [Amended]

53. In § 1182.2 the words "one copy" in paragraph (c) are revised to read "10 copies."

§ 1182.4 [Amended]

54. In § 1182.4 the word "two" in paragraph (c)(1) is revised to read "10" and in paragraph (c)(2), the word "one" is revised to read "10."

§ 1182.5 [Amended]

55. In § 1182.5 the word "two" in paragraph (e) is revised to read "10."

PART 1183—[AMENDED]

56. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11341, 11343, 11344 and 11345a; 5 U.S.C. 559.

§ 1183.1 [Amended]

57. In § 1183.1 the word "three" in paragraph (b) is revised to read "10."

§ 1183.4 [Amended]

58. In § 1183.4 the word "three" in paragraph (b) is revised to read "10."

§ 1183.5 [Amended]

59. In § 1183.5 the word "three" in paragraph (b) is revised to read "10."

PART 1185—[AMENDED]

60. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11322; 5 U.S.C. 559.

§ 1185.7 [Amended]

61. In § 1185.7 the word "six" is revised to read "10."

PART 1186—[AMENDED]

62. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11343(e) and 5 U.S.C. 553.

§ 1186.3 [Amended]

63. In § 1186.3 introductory text, the word "four" is revised to read "10."

PART 1331—[AMENDED]

64. The authority citation in part 1331 is revised to read:

Authority: 49 U.S.C. 10321, 10721.

§ 1331.3 [Amended]

65. In § 1331.3(b) the word "twenty" is revised to read "10."

[FR Doc. 88–6651 Filed 3–28–88; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

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

Farmers Home Administration

7 CFR Part 1951

Analyzing Credit Needs and Graduation of Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its regulations to: (1) Permit FmHA to enter into contracts with contractors to perform graduation functions on Single Family Housing (SFH) loans for refinancing to other credit; (2) remove the number of years a SFH borrower is indebted to FmHA before being considered for graduation; and (3) clarify reviews and subsequent requests for borrower's graduation. This action is being taken to strengthen the graduation program and its effectiveness. The intended effect is to raise revenue and reduce cost and outlays to the Govenment.

DATE: Comments must be submitted on or before May 31, 1988.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Neddie R. Winters, Senior Loan Specialist, or William M. Toney, Chief, Servicing Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309 South Agriculture Building, Washington, DC 20250, telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This proposed rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1521-1 which implements Executive Order 12291 and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local govenrment agencies, or geographic regions; or 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 SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope 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. 91-90, an Environmental Impact Statement is not required.

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The proposed changes are internally imposed on a pilot basis and will, therefore, not have an impact on small entities.

Contracting for Borrower Graduation

The basic purpose of FmHA credit is to supplement credit from private and cooperative lenders. FmHA credit programs are administered in a manner to assure they do not compete or replace other credit available to rural families and groups. FmHA makes rural housing loans only to applicants who are unable to secure the necessary financing from other sources on terms and conditions which they can reasonably be expected to meet. One of the conditions of the loan is that if a borrower makes sufficient financial progress to be able to refinance his/her FmHA debt, he/she will be expected to do so. This is required by Title V of the Housing Act of 1949, the law authorizing rural housing loans.

The Omnibus Budget Reconciliation Act of 1986 directed FmHA to sell sufficient rural housing loans to raise revenue to be used to reduce federal outlays. In an effort to ensure that such revenues are raised in the most efficient manner possible, FmHA has determined that for each loan which can be successfully refinanced in full, FmHA would realize more proceeds than if the loans were made marketable to the public by selling them at a discount.

The Farmers Home Administration proposes to contract with a firm or firms to provide for refinancing of SFH borrowers who have been identified to be eligible for possible refinancing to other credit. The States of California, Michigan, New Jersey, New York, and North Carolina will be pilot locations. Proposals will be solicited from private sector firms to perform borrower refinancing in accordance with FmHA regulations and the requirements of the contract.

FmHA plans to test the feasibility of providing SFH borrower refinancing functions through private firms on a pilot basis to strengthen the graduation program and its effectiveness, and at the same time, raise revenue and reduce costs and outlays to the Government. This pilot project will enable FmHA to evaluate the cost effectiveness and efficiency of providing these services through the private sector within different geographical regions of the country.

Remove the Number of Years a SFH Borrower is Indebted To Be Considered for Graduation

At present, FmHA regulations require that a SFH borrower be indebted for at least 6 years prior to being considered for graduation review. By removing this limitation, it gives FmHA the opportunity to review those borrowers with the greatest capabilities of being

successful in the graduation process. As a result, the graduation program is strengthened and has a greater opportunity for success. It is proposed to remove the 6 years limitation and review only nonsubsidized borrowers regardless of years indebted. This approach would potentially increase the number of borrowers that would actually refinance.

Clarify Reviews and Subsequent Requests for Graduation

FmHA proposes to amend its graduation regulations to assure requests are based on the "borrower's" ability to obtain credit from other sources and not that of another household member such as a spouse who is not indebted to FmHA. It is also proposed to amend FmHA regulations to give proper guidance and instructions to the field staff to accomplish this objective. This will prevent the risk of borrowers being requested to graduate based on unsupportable conditions and facts.

As proposed,

1. Section 1951.254(e) is added to permit FmHA to enter into contracts with contractors to perform graduation functions on Single Family Housing loans for refinancing to other credit.

2. Section 1951.261 is amended to:

A. Remove the number of years a single family housing borrower is indebted to FmHA before being considered for graduation and to review only nonsubsidized borrowers regardless of years indebted.

B. Clarify reviews and subsequent requests for borrower's graduation and to a ssure requests are made based on the borrower's ability to obtain credit from other source and not that of nonborrowers.

C. Include the borrower's name, address and current information under the trial referral and to remove the requirement for coding and establishing an operational file on each prospectus.

3. Section 1951.262 is amended to require written concurrence from OGC prior to accelerating a Single Family Housing account for failure to graduate.

List of Subjects in 7 CFR Part 1951

Loan programs—Agriculture, Rural areas.

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

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 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.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

2. Section 1951.254 is amended to add a new paragraph (e) to read as follows:

§ 1951.254 Responsibility

* * * * *

(e) FmHA may enter into contracts whereby the contractors will contact Single Family Housing borrowers referred to them by FmHA to attempt to have the borrowers refinance their FmHA loans with private credit. See FmHA Instruction 2024–A (available in any FmHA Office) for contracting guidance.

3. In § 1951.261, paragraph (f)(2) is removed, paragraph (f)(1) is added to the end of the introductory text of paragraph (f) and paragraphs (f)(1)(i) through (f)(1)(iv) are redesignated as (f)(1) through (f)(4) respectively; and paragraphs (b)(1)(i)(A), (d)(1)(iv), introductory text of paragraph (e)(4) and the introductory text of paragraph (f) are revised; and paragraphs (b)(1)(i)(A)(*1*) and (b)(1)(i)(A)(*2*) are added to read as follows:

§ 1951.261 Graduation of FmHA borrowers to other sources of credit.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) The list will contain borrowers who have been indebted for at least 3 years for Emergency (EM) and Economic Emergency (EE) loans; 4 years for Operating Loans (OL); 6 years for Farm Ownership (FO), Soil and Water (SW) and Softwood Timber (ST). For Single Family Housing loans, the list will contain borrowers who meet the following conditions:

(*1*) Nonsubsidized borrowers.

(*2*) Borrowers with outstanding balances (principal and interest) in excess of $5,000.

* * * * *

(d) * * *

(1) * * *

(iv) Rural Housing borrowers under an Additional Payment Agreement (APA).

* * * * *

(e) * * *

(4) The servicing official, with the assistance of the County Committee when applicable, will conduct a thorough review of the borrower's financial and repayment position. This review will be based only on the "borrower's" financial ability to obtain other credit and not that of another household member such as a spouse who is not indebted to FmHA. "Borrowers" in this instance means persons indebted to FmHA as evidenced by their signature on the Promissory Note, Mortgage and/or other appropriate security instrument.

* * * * *

(f) *Trial referral.* The servicing official, prior to actually requesting a borrower to graduate as described in paragraph (g) of this section, may make a trial referral. This trial referral can be either verbal or written which individual lenders or by group method and could include all or part of those borrowers selected for graduation in accordance with paragraph (e)(7) of this section. Prospectus information will be obtained from the borrower's file and will be submitted to the lender using FmHA Guide Letter No. 1951–3 for Farm Program borrowers, FmHA Guide Letter No. 1951–4 for Rural Housing borrowers, or letters of similar format. Other data may be added if requested by lenders. The prospectus will contain the borrower's name, address, original loan amount, date of the loan, the interest rate, and the unpaid loan balance. For borrowers selected for a trial referral, a prospectus will be prepared and provided to each lender who chooses to participate, whose lending areas include the borrower's location and whose criteria the borrower appears to meet. Lenders following receipt and review of a prospectus, will be encouraged to indicate their willingness to contact the borrower and accept an application for further consideration. If one or more lenders does express interest in a particular borrower, the borrower will be provided the names of such lenders as possible sources of other credit when the servicing official requests the borrower to gradute. If the lenders participating in the trial referral represent the most likely sources of other credit in a given lending area, and if these lenders fail to show interest in a particular borrower, this is evidence that there is no credit available for that particular borrower and no further effort needs to be made to effect graduation at this time. This information will be noted next to the borrower's name on the graduation review list and the name will be removed from Form FmHA 1951–24 by the servicing official. The lender's participation in the trial referral provision of this paragraph will be optional. Normally, the lender's interest will be determined at the time of the servicing official's survey of lender criteria and policies [see paragraph (c) of this section]. If one or more lenders

indicate a willingness to participate, the servicing official should use the trial referral provision if one or more of the following factors exists:

* * * * *

4. In § 1951.262, paragraphs (a)(1) and (b)(2) are revised to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) * * *

(1) Provide information receipt of both FmHA Guide Letters No. 1951–1 and 1951–2, and letters of similar format, such borrowers will not be asked to graduate. They are, at that point, in default of their security instruments, which require the borrower to comply with all future FmHA regulations not inconsistent with the security instruments. The servicing official will, based on the borrower's failure to supply information in accordance with § 1951.261(e) of this subpart, prepare the required documents recommending legal action and submit them together with the borrower's case file to the official authorized in § 1955.15 of Subpart A of Part 1955 of this chapter to approve foreclosure of the loan type involved (approval official) with a written report outlining credit sources contacted by FmHA and the borrower, the reasons given by the borrower for failure to graduate, action taken by FmHA to verify the availability of credit, and the borrower's available financial resources along with any other date pertinent to the case. The approval official may, with the concurrence of the Regional Attorney, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments. For Single Family Housing loans, written concurrence of the Regional Attorney is required before accelerating the account.

(b) * * *

(2) If the approving official determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15(d)(2)(ii) of Subpart A of Part 1955 of this chapter. If the borrower's account(s) is accelerated, the borrower will be given the right to appeal the decision in accordance with Subpart B of Part 1900 of this chapter. The advice of the Regional Attorney is required before accelerating the account. For Single Family Housing Loans, written concurrence of the Regional Attorney is required before accelerating the account

* * * * *

Date: February 23, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–6845 Filed 3–28–88; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1980

Streamlining of Business and Industry Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulations to streamline the Business and Indusry (B&I) Guaranteed Loan Program, to reduce borrower participation costs, reduce Federal costs per job created or saved, increase the number of jobs created and better direct the program toward displaced farmers and small communities with higher rates of unemployment. This action is being taken to improve program operations and eliminate unnecessary burdens on borrowers.

DATE: Written comments must be received on or before April 28, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Room 6321–S, Farmers Home Administration, USDA, 14th and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 475–3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed 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.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Discussion of Proposed Rule

FmHA proposes to streamline the Business and Industrial (B&I) Guaranteed Loan Program by removing barriers to participation by relatively smaller enterprises (loans of $2 million or less) and reducing such borrowers' costs. The proposal also seeks wider distribution and better utilization of program funds to generate more jobs through greater incentives for smaller enterprises by allowing higher percentages of guarantee for smaller loans, and by adopting a uniform $10 million limit on guaranteed loans. The proposal also seeks to permit guarantees of variable rate loans with interest floors and ceilings and more specifically direct the program toward meeting the needs of displaced farm families and rural communities with higher levels of unemployment. The proposal generally seeks to place a higher priority on loans having a lower cost per job created or preserved, with an emphasis on saving jobs in those rural areas that have higher unemployment rates and more displaced farm families.

All amendments, and all section references, herein are to Subpart E of 7 CFR Part 1980, except for amendments 1

and 2, which are to Subpart A of 7 CFR Part 1980.

A new section, 1980.420, would be added, limiting percentage of guarantee to 90 percent on loans of $2 million or less, 80 percent on loans over $2 million but not over $5 million, and 70 percent on loans over $5 million. In this section, it is emphasized that the percentage of guarantee, up to the maximum allowed, is a matter of negotiation between the lender and FmHA. FmHA proposes this change in an effort to achieve two important objectives. First, FmHA seeks to emphasize assistance to relatively smaller enterprises which on the basis of program experience are generally more labor intensive and are most frequently locally owned and locally financed. The most effective way to carry out the program goal of expanding and maintaining job opportunities in rural areas and small communities is to direct benefits to where they will generate the most jobs. Second, FmHA seeks to preserve those newly created jobs by reducing financial risks. Recent experience has shown a higher rate of delinquency on large loans which would have a larger job loss should the business fail. By providing for greater risk-sharing by the lenders who, after all, receive 100 percent of the interest paid on these loans, FmHA seeks to enforce the highest of standards in both loan production and loan documentation and servicing by guaranteed lenders. A conforming change is made to § 1980.20, which is rewritten to reflect editorial changes made to distinguish between the maximum percentage of guarantee and the maximum loss guaranteed and to conform the section to the forms cited in it.

On any loan, there are costs to borrowers in addition to the payment of principal and interest. FmHA seeks to minimize these costs, such as those for professional services and document preparation. Such ancilliary costs inevitably reduce the borrower's funds available for investments which create and maintain jobs. Often these costs will have the highest relative impact on relatively smaller projects for the simple reason that often professionals providing the services charge the same amount for the same service to a small enterprise as to a large one. This may drive up the real cost of money to the smaller enterprise and this can mean the pool of potential program participants includes a higher percentage of higher risk borrowers willing to pay almost any price. The statutory objectives of the program are most effectively met by maximizing participation by quality borrowers who require FmHA assistance for reasons other than credit worthiness. The proposal seeks to remove disincentives to participate by financially sound smaller enterprises (those borrowing $2 million or less) by permitting State Directors, in certain cases, to waive or modify:

(1) The requirement for feasibility studies by recognized independent consultants (§ 1980.442),

(2) The requirement for an appraisal by an independent fee appraiser (§ 1980.442), and

(3) The requirement of annual audited financial statements from all borrowers (§ 1980.451(i)(13));

(4) And by pemitting the use of local, regional, or national credit reports to verfiy "Statements of Personal History" (Form FmHA 449–4) (§ 1980.451(f)(3)).

Objective standards would govern decisions to waive or modify. For example, only in the case of seasoned loans would a waiver of audits of financial statements be permitted. The proposal would permit State Directors to leave in place the more stringent requirement of present regulations in cases where he determines a need for that more stringent requirement. FmHA concludes that such authority in the State Director will provide flexibility to deal with unusual cases and circumstances.

This proposal would end a preference for one industry as to permissible loan amounts. Presently, FmHA may guarantee loan amounts up to $10 million, except for alcohol production facilities for which loans up to $20 million may be guaranteed. In a program established to create and preserve jobs, there is no sound reason to create a preference for one industry over another. The test needs to be the creation and/or preservation of jobs, all other factors being equal. Thus, FmHA proposes a uniform "cap" of $10 million for loans eligible for guarantee (§1980.413(a)).

FmHA's regulations have contained provisions indicating priorities by which applications would be judged, but provided that applicatons would be considered in the order received (§1980.451(d)). In addition to clarifying the order of consideration, the proposal changes the priority system by creating a point system for determining priority and permitting loans to be judged in comparison to others. The point system emphasizes assistance which generates the most jobs at the least cost where they are most needed. The formula will create a score which can be compared to scores for other proposals. This system eliminates the problem of viewing each proposal in isolation.

Section 1980.423(a)(i) now contains a prohibition against variable rate loans having floors and/or ceilings on interest rates. The proposal would eliminate that prohibition. It can be of obvious value to program participants to be able to negotiate such terms and FmHA concludes there is no sound reason to prevent them from negotiating to a conclusion that includes interest rate floors and/or ceilings.

The proposal defines "area of high unemployment," as used in the new priority rankings and makes necessary conforming changes in the administrative sections of Subpart E of Part 1980.

List of Subjects in 7 CFR Part 1980

Loan Programs—Business and industry—Rural development assistance, Rural areas.

For the reasons set out in the preamble, Title 7, Chapter XVIII of the Code of Fedeal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

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

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

Subpart A—General

2. Section 1980.20 is amended by revising the introductory text to read as follows:

§ 1980.20 Loan guarantee limits.

The maximum loss covered by the Loan Note Guarantee, Form FmHA 449–34, or Form 1980–27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of: the percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or the percentage of guarantee of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be informed in writing on Form FmHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as

opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of this part. FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

* * * * *

Subpart E—Business and Industrial Loan Program

3. Section 1980.402 is amended by redesignating paragraphs (a) through (k) as (b) through (l) and adding a new paragraph (a) as follows:

§ 1980.402 Definitions.

* * * * *

(a) *Area of high unemployment.* An area in which a B&I Loan Guarantee can be issued, consisting of a subdivision or group of contiguous subdivisions of a State which, on the basis of the best available data from Federal or State sources has a seasonally-adjusted level of unemployment 150 percent or more of the national level, as most recently published by the U.S. Department of Labor.

* * * * *

§ 1980.413 [Amended]

4. Section 1980.413 is amended by removing paragraph (a)(4).

5. Section 1980.420 is added to read as follows:

§ 1980.420 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and FmHA.

(a) For loans of $2 million or less, the maximum percentage of guarantee is 90 percent.

(b) For loans over $2 million but not over $5 million, the maximum percentage of guarantee is 80 percent.

(c) For loans in excess of $5 million, the maximum percentage of guarantee is 70 percent.

(d) Lenders and borrowers will propose the percentage of guarantee. FmHA informs lenders and borrowers in writing on Form FmHA 449–14 of any percentage of guarantee less than proposed by the lender and borrowers, and the reasons therefore. FmHA determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Borrower's management.* The borrower's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of borrower or borrower's principals, if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority.

(5) *Trends and conditions.* Current trends and economic conditions.

6. Section 1980.423 is amended by revising paragraph (a)(1) to read as follows:

§ 1980.423 Interest rates.

(a) * * *

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional 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. 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.

* * * * *

7. The introductory text of § 1980.442 is revised to read as follows:

§ 1980.442 Feasibility studies.

Feasibility studies by recognized independent consultants are required. In the case of loans of $2 million or less, the State Director may waive this requirement when the cost of such study would be excessive and the borrower's principals are experienced in the type of business or industry involved. The cost of feasibility studies shall be borne by the applicant and may be paid from funds included in the loan. 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:

* * * * *

8. Section 1980.444 is amended by revising paragraph (a) to read as follows:

§ 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. In the case of loans of $2 million or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of collateral involved. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used. The lender will be responsible for assuring that appropriate appraisals are made.

* * * * *

9. Section 1980.451 is amended by revising the introductory text of paragraph (d), paragraphs (d)(3) and (f)(3), and the introductory text of (i)(13), and Administrative paragraph A.6.(c) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(d) *Loan Priorities.* Applications and preapplications received by FmHA will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (d)(3) of this section, FmHA will compare an application to other pending applications.

* * * * *

(3) Priorities will be assigned by FmHA to eligible applications on the basis of a point system that takes into account project location, the creation and saving of jobs, the cost at which those jobs would be created or saved, seasonal and part time job impact, and leveraging of FmHA assistance. The application and supporting information submitted with it will be used to determine an eligible proposed project's priority for available funds. The priorities described in this paragraph will be used by FmHA to score projects. A copy of the calculations of the score should be placed in the case file for future reference.

(i) *Location Priorities.* The priority score for location will be the score for the highest-ranked category in which the project fits. If the location does not fit one of these categories, it receives no points for location. The categories, and their point scores, are:

(A) Located in a city or area under 25,000 population (10 points).

(B) Located in a city or area under 25,000 population that is in an area of high unemployment as of the date of application (20 points).

(C) Located in an area of high unemployment as of the date of application, provided the borrower certifies in writing to the State Director in simple narrative or letter form that the project will employ on a permanent,

full time basis (providing at its own cost such training or retraining as may be needed) persons (numbering no fewer than 25 percent of the project's employment) who are members of displaced farm families which recently derived from farming or ranching the majority of their combined incomes but are no longer actively engaged in farming or ranching as operators or employees (30 points).

(ii) *Jobs Priorities.* The priority score for jobs created and/or saved is the score for the highest-ranked category in which the project fits. If the project does not fit one of these categories, it receives no points for jobs. The categories, and their point scores, are:

(A) Project will contribute to the overall economic stability of the project area and generate permanent jobs beyond the entrepreneur and the entrepreneur's household (10 points).

(B) Project will contribute to the overall economic stability of the project area and will employ on a permanent, full time basis a number of persons that is significant in the context of the area's economy (20 points).

(C) Project will contribute to the overall economic stability of the project area, will employ on a permanent, full time basis a number of persons that is significant in the context of the area's economy, and will retain in that area a significant number of jobs that would otherwise be lost (35 points).

(iii) *Job cost priorities.* The priority score for the project's cost per job is the score for the highest-ranked category in which the project fits. First divide the amount of the FmHA guaranteed loan by the number of jobs created or saved. This will result in the cost per job. Count only the number of year-round, full time jobs. Part time jobs may be reduced to a fraction of a full time job and counted. For example, a 20 hour per week job, or a job that is full time for six months per year, is one half of a job. Second, determined the State's nonmetropolitan median income as described in § 1980.451 (d)(3)(vi). Third, determine a percentage by dividing the indexed State nonmetropolitan median income by the cost per job. The categories, and their point scores are:

(A) Loan(s) on which the percentage is greater than 150 percent, but less than 200 percent (5 points).

(B) Loan(s) on which the percentage is greater than 100 percent, but not more than 150 percent (15 points).

(C) Loan(s) on which the percentage is 100 percent or less (25 ponts).

(D) If the percentage exceeds 200 percent, a high cost per job in that State, no points are received for job cost.

(iv) *Additional Points.* There shall be added to the score the points indicated for any and all of the following criteria met by the project.

(A) FmHA guaranteed loan(s) is/are less than 50 percent of project cost (5 points).

(B) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(C) Project will, in addition to any permanent full time jobs, create a significant number of part time or seasonal jobs that will provide additional income to underemployed residents of the project area without their having to give up any present part time or seasonal jobs (10 points).

(v) *Administrative Points.* The State Director may assign up to 20 points to an application in addition to those points scored under § 1980.451(d)(3)(i) through (iv). These administrative points are intended to be assigned by a State Director only in cases of unforeseen exigencies, emergencies, benefits to other FmHA-assisted projects (including the limiting of financial risks affecting FmHA loans and loan guarantees) or the loss of financing if FmHA funds are not committed in a timely fashion. They may also be assigned in cases in which the project's goods or services are essential to other Federally assisted projects and activities in the area or to the successful implementation of an economic develoment strategy for the area that is sponsored and/or operated by an agency of the Federal or State government. An explanation for the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to twenty points. An assignment of points by the Administrator will be by memorandum, stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file. In assigning priorities to applications and in selecting projects for funding, FmHA will consider State development strategies. Funds (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.

(vi) *Indexation.* When current, annual data are not available to determine a State's nonmetropolitan median income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of Census data is necessary. The State Director will use the figure from the most recent decennial Census of the United States, increased by a factor representing the increase since the year of that Census in the Consumer Price Index ("CPI–U"). That factor shall be furnished annually by the National Office, FmHA.

* * * * *

(f) * * *

(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. Whenever possible, a local, regional, or national credit report, furnished by the lender, will be used to verify data on Form FmHA 449–4.

* * * * *

(i) * * *

(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 record keeping. There must be a requirement 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. In the case of seasoned loans of two million dollars or less, the State Director may modify this audit requirement by permitting the use of compilation financial statements or

reviews to satify the audit requirement if prior audits were satisfactory and the cost of an audit would be excessive. The loan agreement must also include, but is not limited to, the following:

* * * * *

Administrative

A. * * *

6. * * *

(c) A local, national or regional credit report and Form FmHA 449–4 for all loans over one million dollars or for loans, regardless of size, when the State Director believes a character evaluation check is advisable.

* * * * *

10. Section 1980.469 is amended by revising paragraph "*Administrative*" C(1) to read as follows:

§ 1980.469 Loan servicing.

* * * * *

Administrative

C. * * *

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, but that in the case of seasoned loans of two million dollars or less, compilation financial statements or reviews may satisfy the audit requirement.

* * * * *

Appendix C of Subpart E—[Amended]

15. Appendix C of Subpart E of Part 1980 is proposed to be amended by removing paragraph (4) and redesignating paragraphs (5) through (14) as (4) through (13).

Dated: February 24, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–6844 Filed 3–28–88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–14–88]

Limitations on Passive Activity Losses and Credits; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the limitations on passive activity losses and passive activity credits. Changes to the applicable tax law were made by the Tax Reform Act of 1986.

DATES: The public hearing will be held on Tuesday, June 28, and (if necessary) Wednesday, June 29, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, June 14, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–14–88) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marcia Evans of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the limitations on passive activity losses and credits. The Income Tax Regulations (26 CFR Part 1) provide temporary rules relating to the limitations on passive activity losses and passive activity credits. The temporary regulations reflect the amendment of the Internal Revenue Code of 1986 by sections 501 and 502 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2233 and 2241), which added section 469. Section 469 disallows the passive activity loss and the passive activity credit for the taxable year.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than June 14, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Donald E. Osteen,

Director, Legislation and Regulation Division.

[FR Doc. 88–6807 Filed 3–28–88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Safety Standards for Underground Coal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment for the Agency's proposed rules for ventilation for underground coal mines in 30 CFR Part 75.

DATE: Written comments on the proposed rule for ventilation standards must be received on or before April 28, 1988.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the **Federal Register** (53 FR 2382) proposed rules to revise existing ventilation standards for underground coal mines. The comment period for the ventilation proposal was scheduled to end on march 28, 1988. Due to requests from the public, MSHA is extending the comment period for the proposed rule to April 28, 1988. All interested parties are encouraged to submit comments prior to that date.

Since publication, the Agency has re-evaluated certain aspects of the proposal in light of Agency experience and believes that the proposal may not appropriately address mining practices and conditions in anthracite mines. The pitch of the coal seam, the mining conditions, mining equipment, and mining methods in anthracite coal mines vary dramatically form bituminous coal mines: These differences may therefore

require that anthracite mines be addressed in a different manner than bituminous mines. Accordingly, MSHA solicits comments on whether certain provisions of the ventilation proposal adequately address anthracite mines. These provisions include those for escapeways, main mine fans, and weekly examinations. The Agency also solicits comment on whether there are additional issues which should be considered relative to ventilation in anthracite mines.

In the proposal, § 75.350 would allow belt haulage entries to be used as intake air courses to ventilate working faces, provided that an early warning fire detection system is used. Under the existing standards belt haulage entries may be used as intake air courses to ventilate a working face in mines opened prior to 1970 under certain conditions. The proposal would apply equally to pre-1970 and post 1970 mines. MSHA solicits comments on the safety benefits as well as the impact of the proposal.

The proposal also includes a provision in § 75.383 which would generally require a travelway off the tailgate side of a longwall face for use by miners in the event of an emergency. At this stage in the rulemaking process, the Agency is interested in comments on procedures to be followed if a roof fall or other blockage in the tailgate impedes travel.

Date: March 25, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-6891 Filed 3-25-88; 11:32 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3355-8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; New Source Review Plantwide Definition

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The revision will replace the existing dual definition of stationary source with the plantwide definition of stationary source in the preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The intended effect of this action is to approve a state's request to amend its SIP in accordance with section 110 of the Clean Air Act.

DATES: Comments must be received on or before April 28, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, J.F.K. Federal Building, Boston, MA 02203. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, J.F.K. Federal Bui1ding, Boston, MA 02203 and the Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lynne Hamjian, (617) 565-3246; FTS 835-3246.

SUPPLEMENTARY INFORMATION: On August 22, 1982, and June 22, 1987, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a revision to its State Implementation Plan (SIP). This revision includes a change from the existing dual definition of stationary source to the plantwide definition of stationary source in the preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The preconstruction permitting process is commonly referred to as new source review (NSR).

Background

On October 14, 1981 (46 FR 50766) EPA revised the NSR regulations in 40 CFR Part 51 to allow adoption and use of the "plantwide" definition of stationary source in nonattainment areas. In this rulemaking, EPA defined stationary source as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act. The reason this is a "plantwide" definition is that the four terms, *building, structure, facility* or *installation* are defined as a single term, meaning all of the pollutant-emitting activities which belong to the same industrial grouping (i.e. same two digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person.

The so-called "dual" definition also defines stationary source as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act. Under this definition, the three terms *building, structure,* or *facility* are defined, like the plantwide definition, as a single term neaning all of the pollutant-emitting activities which belong to the same industrial grouping (i.e. same two digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person. However, the fourth term, *installation,* has a separate definition meaning an identifiable piece of process equipment. Therefore, under the dual definition a stationary source is all of the buildings, structures, or facilities (plantwide), and also each installation (piece of equipment). That is, the whole plant and each identifiable piece of process equipment are stationary sources.

The difference between these two definitions largely comes into play in determining to what extent netting may be used for defining whether a modification is major. Netting is a trading activity whereby contemporaneous actual emission increases and decreases are combined with actual emissions of a proposed modification to an existing major stationary source. (For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.) If this calculation results in a net emissions increase which is below the significance levels, the modification is *not* a major modification for NSR purposes. The key factor to consider is that the actual emissions increases and decreases considered in a netting transaction must all occur at the very same *major* stationary source being modified. For this reason, the definition of stationary source is critical for defining the universe of increases and decreases eligible for netting.

Under the plantwide definition, quantifiable increases and decreases occurring anywhere on plant property from emission units with the same first two digit SIC code are eligible for netting. Under the dual definition of stationary source, when any existing individual piece of equipment in and of itself is large enough in terms of potential emissions to be defined as a *major* stationary source, only increases and decreases in actual emissions from that individual emission unit are eligible to net any modification to it below the levels which would define it as major. Further, when the modification consists of an addition of a new piece of process equipment which in and of itself is a

major stationary source, no netting may occur as a result of reductions at the existing major stationary source. While the plantwide definition clearly provides a greater opportunity for netting in general, it should be noted that some netting is allowed under the dual definition as well. In fact, where no individual piece of pollutant emitting equipment in and of itself is a *major* stationary source, the dual definition allows much the same opportunity to net as the plantwide definition.

In the October 1981 **Federal Register** notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–69). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the States under the demands of Part D eventual,ly would have adequate SIPs in place. For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767 col. 2].

The EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirtier processes and hence retard not only economic growth, but also progress toward clean air. The EPA also pointed out that under the plantwide definition new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans, and at best the potential for air quality improvements driven by the marketplace.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one condition on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the state would have to revise its attainment strategy as necessary to accommodate reduced NSR permitting of major modifications under the plantwide definition (46 FR 50767 col. 2, 50769 col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Clean Air Act's goal of maximizing state flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Clean Air Act's environmental objectives as well (see 104 S.Ct. at 2792). EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision. Further, EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

Massachusetts' Revision

On August 27, 1982, the Commonwealth of Massachusetts submitted revisions to its preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The revisions included a change to the plantwide definition of stationary source from the existing dual definition. On January 10, 1984, EPA published a final rulemaking notice (FRN) which approved the revisions with one exception. EPA took no action on the request to revise the definitions of "source" and "building, structure, facility, or installation" to the plantwide definition and stated that the existing dual definition of stationary source would remain in the SIP. EPA's decision to take no action on the revised definition in the January 10, 1983 rulemaking was based on a then pending court case, *Natural Resources Defense Council* v. *Gorsuch*, 685 F.2d 718. In 1984, the Supreme Court upheld the use of the plantwide definition of stationary source in nonattainment area new source review. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778.

On February 26, 1987, EPA issued guidance for approving the plantwide definition of stationary source in state new source review regulations for nonattainment areas. The guidance lists specific criteria for approving the plantwide definition. According to that guidance if a state has a fully adopted and approved Part D SIP for each primary nonattainment area and is not subject to a call by EPA for a SIP revision, the plantwide definition is approvable so long as the state did not rely on a dual or similar definition in its attainment demonstration(s). The February 26, 1987 guidance requires additional criteria for a state that does not have a fully-approved Part D plan(s), that is subject to a SIP call by EPA, or that did rely on the use of dual definition in its attainment demonstration(s).

On June 22, 1987 the Commonwealth of Massachusetts resubmitted its request to revise its SIP to substitute a plantwide definition of stationary source for the existing dual definition in the nonattainment NSR regulations. EPA has previously approved the Commonwealth's Part D plans for relevant nonattainment areas including attainment demonstrations. The Massachusetts DEQE has certified that it did not rely on any reductions from the operation of the existing NSR program in those demonstrations, and EPA's examination of the demonstrations confirms the Commonwealth's certifications. Therefore, EPA proposes to approve the switch to a plantwide definition in the Massachusetts SIP's NSR regulations for nonattainment areas.

On November 24, 1987 (52 FR 45044), EPA proposed a policy for approving post-1987 ozone and carbon monoxide SIP revisions for areas not attaining the national ambient air quality standards (NAAQS). Appendix A of the proposed policy lists "potential 1988 SIP call areas," i.e., areas which could be subject to an EPA-required revision of the SIP for those areas. Included in the list are the metropolitan areas of Boston, Springfield, New Bedford, and

Worcester for ozone and carbon monoxide.

However, since the post-1987 policy is a proposal rather than a final policy, and the Massachusetts areas listed in Appendix A of the proposed policy are "potential" rather than definite SIP call areas, EPA at this time intends to continue to treat the Massachusetts SIP as an approved SIP. If, prior to the time of final rulemaking Massachusetts is subject to a SIP call (or other criteria are no longer being met), then the Commonwealth will have to meet the additional criteria for such States as outlined in the February 27, 1987, guidance. Specifically, the Commonwealth would be required to submit written assurances that it is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development stated in the submission or previously forwarded to EPA.

Proposed Action

EPA is proposing to approve a revision to use the plantwide definition of stationary source instead of the existing dual definition currently in place in Massachusetts' nonattainment NSR SIP regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: September 28, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88–6814 Filed 3–28–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1321, 1326 and 1328

Grants for State and Community Programs on Aging; and Grants to Indian Tribes and Organizations Service Older Hawaiians for Supportive and Nutrition Services

AGENCY: Administration on Aging (AoA), Human Development Services Office, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration on Aging (AoA) proposes new and revised regulations for Part 1321 for grants to State and Community programs on aging redesignates Part 1328 for grants to Indian Tribes and organizations as Part 1326, and adds a new Part 1328 for grants to Native Hawaiians. The basis for these changes is the passage of Pub. L. 100–175 (the Older Americans Act Amendments of 1987) and the Department's commitment to regulatory reform.

These proposed rules implement Titles III and VI of the Older Americans Act, including the amendments to the Act which modify the current program. The changes emphasize the strengthened roles of the State and area agencies on aging in the development of community-based systems of services.

DATE: Comments must be received on or before May 31, 1988.

ADDRESS: Please address comments to: Carol Fraser Fisk, Commissioner, Administration on Aging, Room 4760, 330 Independence Avenue, SW., Washington, DC 20201. Beginning April 12, 1988, copies of the comments will be available for public inspection in Room 4739, 330 Independence Avenue, SW., Washington, DC 20201, between the hours of 9:00 am and 4:00 pm.

FOR FURTHER INFORMATION CONTACT: Frederick Luhmann, Office of State and Tribal Programs, Administration on Aging, Room 4739, 330 Independence Ave., SW., Washington, DC 20201, (202) 245–0011.

SUPPLEMENTARY INFORMATION

Background

The Older Americans Act was first enacted in 1965. The President signed the Older Americans Act Amendments of 1987 (Pub. L. 100–175) on November 29, 1987. The Act was amended eleven times between 1965 and 1987.

As first enacted, the Act authorized funding under Title III to support in each State a State Agency on Aging. Title III also provided funds for each State agency to initiate local community projects to provide social services to older persons.

In 1972, a new Title VII was enacted which authorized funds for local community projects to provide nutrition services to the elderly. The projects were designed to provide older persons aged 60 and older with at least one hot nutritious meal five or more days a week. In 1973, the amendments revised the Title III State Grant Program by requiring the State agency to: (1) Divide the entire State into planning and service areas, (2) determine in which areas an area plan would be developed, and (3) designate an area agency on aging to develop and administer the plan in each area. The 1973 amendments also added a new Title V to the Act which authorized the Commissioner to make grants directly to local community agencies to pay part of the cost of the construction, acquisition, renovation, alteration, or initial staffing of facilities for use as multipurpose senior centers.

The 1978 amendments consolidated under Title III the social services, nutrition services, and multipurpose senior center programs formerly authorized under Titles III, V and VII. This consolidation was designed to eliminate duplicative and overlapping functions that had been conducted under each Title. It also reemphasized the concept of a single focal point for service delivery within each community. The 1978 amendments enacted a new Title VI, a direct grant program to Indian tribal organizations for older Indians. The 1981 amendments made several technical amendments to the Act and reinforced the basic direction established under the 1978 amendments. Most of the changes expanded the capacity of State agencies, area agencies and tribal organizations through increased administrative flexibility.

The 1984 amendments included a number of changes in the various service programs under Title III, including provisions to increase further the ability of States to transfer funds between their separate allotments for supportive and nutrition services; to specify particular attention to the needs of low-income minority older persons; to require area agencies to conduct activities to facilitate coordination of community-based long-term care services; and to strengthen the long-term care ombudsman program. In addition, the 1984 amendments modified the

manner in which funds for State administration are allocated to State agencies on aging, specified a statutory limitation on the amount of funds which could be used for administration of Title V, and created a new title for health education and training activities for older persons.

In 1986, legilation increased the authorization of appropriations for the USDA cash and commodity subsidy program for fiscal years 1985–87 and set the level of reimbursement at 56.76 cents for each meal served under Title III for each of those years. The 1987 amendments removed the former provision under which the USDA reimbursement rate was related to changes in the Consumer Price Index. A new fixed reimbursement rate was established for the four year authorization created by the 1987 amendments.

The 1987 amendments provide a strong basis for Older Americans Act supported activities that are responsive to the complex and changing environment which is emerging with the aging of American society. With enactment of these amendments, the Act continues to underscore the collaborative efforts that are needed to ensure that every community in this nation provides the opportunity for individuals to live and mature with dignity and independence. The reauthorized Act reaffirms expectations that AoA, State agencies on aging and area agencies on aging provide leadership at their respective levels and work to establish strong partnerships with other public, private and voluntary sector organizations to assure that the nation is responding to the challenge of an aging society. The role of the State agency on aging is reinforced as the developer of policies and procedures to guide and direct area agencies. The amendments also further enhance the role of the area agency on aging as an advocate on behalf of the elderly and catalyst for ensuring the existence of community-based systems of services for older persons in every community in the planning and service area.

The 1987 amendments authorize the initiation of a number of activities including the establishment in the Administration on Aging of an Office for American Indian, Alaskan Native and Hawaiian Native Programs headed by an Associate Commissioner who would be responsible for Title VI and for chairing an interagency task force related to older Indians. The amendments also establish a separate Title VI–B program of grants for supportive and nutritional services to older Hawaiian Natives. Under Title III, the amendments create: a new Part D to support non-medical in-home services for frail older persons; a new Part E providing grants to States to assist them in meeting special needs of older persons; a new Part F supporting preventive health services for the elderly; and a new Part G providing grants to States for programs to prevent abuse, neglect and exploitation of older individuals. The new amendments require each State to establish an Office of State Long-Term Care Ombudsman. The Commissioner on Aging is required to conduct a study of the ombudsman program and report to Congress on the findings and recommendations of the study.

Regulation Development

In conjunction with the Administration's effort to reduce regulatory burden and to provide States and area agencies with greater flexibility to respond to the needs of their respective populations, the Department established several rulemaking principles to be applied in the development of regulations.

These principles are to:

(1) Insure that all regulations are clearly within the authority delegated by law and consistent with Congressional intent.

(2) Emphasize private market forces whenever feasible, rather than government mandate, when developing policies to reach desired objectives.

(3) Provide maximum flexibility to State and local governments.

(4) Minimize Federal, State, local and private costs.

(5) Prevent fraud, abuse, waste and inefficiency.

(6) Eliminate regulations not serving a compelling Federal interest or reform those not implemented in the least intrusive means available.

These principles provided the framework used by the Administration on Aging in developing the proposed rules to implement the 1987 Amendments to the Act.

In developing these proposed regulations, the framework was changed to improve their logic and readability. However, these structural changes are primarily intended to clarify provisions in the Act or in current regulations. Virtually all of the content of the current regulations has been retained. These new regulations include the following sections with content unchanged from the current regulations: § 1321.25, § 1321.27, § 1321.29, § 1321.31, § 1321.33, § 1321.41, § 1321.43, § 1321.45, § 1321.59, § 1321.69, § 1321.75, § 1321.77, § 1321.79, § 1321.81 and § 1321.83. Although the content is unchanged, the section number may differ from current regulations.

The changes proposed fall into three clusters:

1. Changes to reaffirm the intent of the Older Americans Act.

Given the growth in the number of older persons and increased interest in aging issues, there is a need to reaffirm the nature of the partnerships and the leadership roles of those who have responsibilities under the Act to develop a range of options for all older persons in our nation. Such clarifications were made in the types of proposed regulations: § 1321.7 Mission of the State agency; § 1321.53 Mission of the area agency; and § 1321.63 Purpose of services allotments under Title III.

2. Changes to implement provisions of the 1987 reauthorization of the Act.

The 1987 amendments to the Act greatly expand the challenges and responsibilities of all partners in the aging network. In order to assure that legislative intent is fulfilled in the most efficient and coordinated manner, guidance is necessary in a number of areas. Examples of the types of changes proposed to properly guide implementation of the 1987 amendments include the following: § 1321.11 State agency policies, § 1321.37 Intrastate funding formula, and § 1321.55 Organization and staffing of the area agency.

3. Changes to make technical corrections in current regulations.

Minor technical corrections in the current regulations are necessary to properly reflect the intent of the regulations or to cite cross–references more precisely. Examples of the technical changes proposed include the following: § 1321.19 Amendments to the State plan, § 1321.35 Withdrawal of area agency designation, and § 1321.67 Service contributions.

We are soliciting comments only on those sections of the regulations noted below which discuss new or revised regulatory provisions. Opportunity for public comment previously was provided on all of the other content of the regulations which remain unchanged. In the explanation given below, discussion is focused on the nature of and reasons for proposing the changes from current regulations.

Part 1321—Grants to State and Community Programs on Aging

Section 1321.1 Basis and purpose of this part.

Paragraphs 1321.1 (b) and (c) are revised to clarify and better characterize

the expected result and further emphasize the need to target efforts towards older individuals with the greatest social or economic need, with particular emphasis on low income minority elderly persons.

Section 1321.3 Definitions.

All of the definitions in the current regulations are retained and additional definitions for the following terms are provided: frail, in-home service, official duties, periodic, service, and significant population.

"Frail" and "in-home service" are defined in Title III, Part D, of the Act and are added to make these terms applicable to all programs under this Part.

The Act in section 307(a)(12)(J) requires the Commissioner to define "official duties," and this definition is proposed to carry out this requirement.

"Periodic" is defined to mean at one year intervals, at minimum, so that evaluation and public hearing requirements at the area and State levels can be coordinated with a required annual report on targeting to the President and the Congress.

"Significant population" with respect to required outreach to older Indians is defined in section 306(a)(6)(N) as at least 50 eligible persons because it seems reasonable to use the same population threshold the Act prescribes for a tribe to qualify for a Title VI grant.

Section 1321.5 Applicability of other regulations.

A cross-reference to 5 CFR Part 900, Subpart F, Standards for a Merit System of Personnel Administration, has been added as these standards apply to State and Community Programs on Aging.

Section 1321.7 Mission of the State agency.

A general statement is included on the mission of the State agency to emphasize Congressional interest in its leadership role in fostering the development of comprehensive and coordinated community based systems throughout the State. The role in designating area agencies on aging is also clarified.

Section 1321.9 Organization and staffing of the State agency.

The amendments to the Act place significant importance on advocacy, particularly with regard to the ombudsman program. Thus, requirements in this section emphasize the advocacy role of the State agency and the requirement regarding staffing of the State agency, including the State Long-Term Care Ombudsman Office.

Some States have enacted laws creating ombudsman agencies and functions. In some cases the State prescribed functions differ from those required in the Older Americans Act. We are proposing in § 1321.9(d) to require the Governor in these cases to include a State plan assurance that the requirements of the Act will be met in addition to those of the State statute.

The Act in section 307(a)(12) requires that the Office of the State Long-Term Care Ombudsman be free of conflict of interest. If the Office is established by contract or other arrangement outside of the State agency on aging, the Act prohibits it from being part of an agency or organization which is responsible for licensing or certifying long-term care services. However, if the State agency on aging has the function of licensing or certifying long-term care services, the Department has determined that the State agency is not prohibited by the Act from operating the Office of the State Long-Term Care Ombudsman directly. In the latter case, the State would have to promulgate specific policies and procedures to assure that no conflict of interest will occur. The Act in section 307(a)(12)(A) also requires that the ombudsman for each State serve on a full time basis.

Section 1321.11 State agency policies.

A State agency shall develop policies governing all aspects of the operation of Title III programs.

Major changes in the Act with respect to the statewide ombudsman program will necessitate the development of new State policies and procedures. The specificity of the Act and the varying circumstances in each State make it necessary that each State develop written policies and procedures on the ombudsman program, including the relationship of the State obmudsman program at the local level to the area agency.

The current regulations include in § 1321.55 a prohibition on the State agency requiring an area agency to submit for prior review or approval any proposed subgrants or contracts with public or private nonprofit agencies or organizations. This requirement is being deleted in the proposed regulations because State policies govern the operational aspects of this part.

Section 1321.13 Advocacy responsibilities.

This new section is taken in large part from § 1321.33 of the current regulations. The list of advocacy functions in the new § 1321.13(a)(1) has been expanded to conform to the expanded list of such functions in the Act. Also, portions of this section which are repetitive of other provisions have been deleted.

Section 1321.15 Duration, format and effective date of the State plan.

This section is a modified version of § 1321.8 in the current regulations.

Section 1321.17 Content of State plan.

The current regulations in § 1321.9(e)(5) permit the State agency to fund program development and coordination activities as a cost of supportive services after the State agency has spent 8.5 percent of the total of its combined allotments for supportive and nutrition services on the administration of area plans. This provision is not included in the proposed regulations because the level of funds available for the administration of area plans is increased by the 1987 amendments to the Act from 8.5 percent to 10 percent of a State's Title III funds. Therefore, program development and coordination activities may no longer be funded as a cost of supportive services.

In paragraph (e), prior Federal fiscal year information on efforts to assist low income minority and rural elderly people is included as an annual State plan requirement. In sections 307(a) (23) and (29) of the Act, the Congress identified this information as a priority requirement.

In paragraph (f)(1), State plan assurance is proposed to emphasize that the State agency shall monitor each area agency to be certain that all of the activities in which the area agency engages are appropriate to its statutory mission.

In paragraph (f)(7), State plan assurance is added requiring each State to develop policies and procedures to facilitate management of the program at all levels.

In paragraph (f)(8), because of the concern of Congress and multiple references in the Act to older persons in greatest economic or social need, a State plan assurance is added requiring an assurance that each area agency will arrange for outreach with special emphasis on this category of older persons, with particular attention to low-income minority individuals.

In paragraph (f)(9), the Act contains many explicit new requirements for the Commissioner to collect data. The new data collection requirements can only be met with the full and timely cooperation of all States, area agencies and service providers. Thus, a new State plan assurance is included concerning the State agency's responsibilities for data collection from area agencies.

In paragraph (f)(11), we have implemented a new provision in section

306(a)(6) to require that area agencies make information available to elderly individuals about low or no cost opportunities for post-secondary education.

In paragraph (f)(12), we are proposing to implement section 307(a)(13)(I) to permit disabled individuals living in a household with and accompanying a person eligible for congregate meals to receive a meal funded under Title III–C. The conference committee report includes a statement that this eligibility does not extend to individuals who live together in an institutional setting (H.R. Conf. Rep. 100–427, 100th Cong. 1st Sess. 75 (1987)).

Section 1321.19 Amendments to the State plan.

This section replaces § 1321.11 of the current regulations. Under subsection (a)(3) a requirement is included that in any year in which a new State plan is not submitted, the State plan shall be amended to update information related to prior year services to minority and rural persons. States also are required to adhere to guidelines that the Commissioner will provide specifying how the information is to be presented. This provision will enable the Commissioner to meaningfully aggregate and analyze the information for reports that are required by the Act.

Section 1321.21 Submission of the State plan or plan amendments to the Commissioner for approval.

This section is based on § 1321.13 of the current regulations. A clarification is proposed requiring that amendments to the State plan as well as the State plan itself be signed by the Governor or the Governor's designee. This is the usual practice for most States and is proposed because amendments are only required in areas of substantial importance.

Section 1321.23 Notification of State plan or plan amendment approval.

Notification of the approval of State plan amendments will follow the same procedures as are used for approval of State plans. This is consistent with our rationale for changes proposed in § 1321.21.

Section 1321.35 Withdrawal of area agency designation.

This section is based on § 1321.39 of the current regulations. Congress has added new language to the Act in section 305(c) specifying that an area agency is "to function only" for the purpose of serving as an area agency. Language to enable States to withdraw area agency designation where their activities create a conflict of interest with their statutory mission has been added. This section also adds language to assure that the State agency has policies and procedures regarding withdrawal of area agency designation.

Section 1321.37 Intrastate funding formula.

The Act has been amended in section 361 to provide for a program of preventive health services in a new Part F. The new program will require special accommodations in intrastate funding formulas based upon the requirement in section 362 of the Act that, in carrying out this part, the State agency give priority to areas of the State that are medically underserviced and have a large number of individuals who have the greatest economic need. Paragraph (b) proposes a separate allocation to area agencies based on new criteria in section 362 of the Act.

Section 1321.47 Statewide non-Federal share requirements.

The intent of the Act is reflected in considering the ombudsman program and all other services as supportive services for purposes of determining the matching funds required to qualify for Federal funds under this part. The Act in section 304(d)(1) requires that the Federal share for the cost of administration of area plans will not exceed 75 percent and that the Federal share for the cost of supportive services, senior centers and nutrition services shall not exceed 85 percent of the cost. This regulation points out that the matching requirements apply on a statewide basis for each allotment which the State receives.

Section 1321.49 State agency maintenance of effort.

The amendments to the Act change the time period used in calculating the State agency maintenance of effort from one year to three years. Therefore, this section is changed to conform to the Act. It is important to note that the requirements of this section also apply to the ombudsman program. This means that any funds which a State receives for the ombudsman program from Title III may not replace State funding for the program.

Section 1321.51 Confidentiality and disclosure of information.

The current regulations in § 1321.19 require that the States have procedures to protect the confidentiality of information about older persons collected, "in the delivery of services." This requirement is expanded in paragraph (a) to include any information collected, "in the conduct of its responsibilities." This change is made to ensure the privacy of elderly clients in all activities funded under this Part.

The Act contains a new requirement in section 306(d) that an area agency may not require any provider of legal assistance under Title III to reveal any information which is protected under attorney-client privilege. Paragraph (c) extends this prohibition to the State.

Section 307(a)(12) of the Act requires an assurance from the State agency that it shall "establish and operate" the ombudsman program regardless of whether the program is operated directly or through contract. Consistent with this provision of the Act, clarification is provided in paragraph (d) that the State agency on aging has the right of access to the files of the Office of the State Long-Term Care Ombudsman, notwithstanding the confidentiality requirements of section 307(a)(12)(D).

Section 1321.52 Evaluation of unmet need.

The Commissioner is required by September 30, 1989 to submit a report to the Congress summarizing in detail for each State the results of State evaluations of the unmet need for supportive services, nutrition services, and multipurpose senior services. The report to the Congress shall include recommendations of the Secretary with respect to the need for administrative action and legislation relating to satisfying the unsatisfied demand for supportive services provided at public or privately funded senior centers. The Commissioner is required under the Act to issue regulations to assure that the evaluations from the States include objective and statistical data.

Section 1321.53 Mission of the area agency.

In paragraph (a) we propose a mission statement of the area agencies to reaffirm Congressional intent concerning the fundamental responsibility of the area agency in providing leadership on all aging issues in the planning and service area. In keeping with this intent, the area agency, under the leadership and direction of the State agency on aging, is expected to initiate actions to carry out a wide range of activities which increase the capacity and foster the development or enhancement of comprehensive and coordinated community based services systems for older persons.

The characteristics or elements that a comprehensive and coordinated community based system shall exhibit

are proposed in paragraph (b). These characteristics or elements have been previously published and shared with all State agencies on aging and area agencies on aging and have received broad acceptance.

A clarification is included in paragraph (c) that expenditures of Older Americans Act funds are for activities which contribute to comprehensive and coordinated community based systems. In addition, in keeping with section 306(a)(3) of the Act, this section clarifies the responsibility of the area agency to designate community focal points, giving special consideration to designating multipurpose senior centers as such focal points. Focal point as used in this part is defined in section 302(12) of the Act to mean a facility established to encourage the maximum collocation and coordination of services for older individuals at the community level. This use of the term is distinct from its usage in section 306(a)(6)(D) of the Act which refers to the area agency as the advocate and focal point representing the interest of older individuals at the area level by reviewing, monitoring, evaluating, and commenting on Federal, State and local plans, budgets, regulations, programs, laws, etc.

Section 1321.55 Organization and staffing of the area agency.

Current rules at § 1321.57 regarding organization and staffing of the area agency are expanded to clarify that the area agency may be placed within an "umbrella" agency, such as a city or county human services department, council of governments, regional planning commission, or regional planning district.

If included under such a multipurpose agency, the area agency shall remain an identifiable unit that functions only for the purpose of serving as the area agency on aging.

Section 1321.57 Area agency advisory council.

The language of current § 1321.61 is modified to add a statement in paragraph (a) to emphasize that the advisory council's role is to assist the area agency in the development and coordination of community based systems of services for older persons. The role of the advisory council is also enhanced by requiring that the area plan and amendments be transmitted to the council for review before it is transmitted to the State agency for approval. In keeping with Congressional intent, individuals representative of supportive services organizations and health care organizations, including veterans' health care (if appropriate), shall be included as members, as well as persons with leadership experience in the private and voluntary sectors.

The council also should involve individuals and representatives of organizations from the community who will directly contribute to enhancing the leadership role of the area agency.

Section 1321.61 Advocacy responsibilities of the area agency.

Additional language in paragraph (b)(5) of this section on the advocacy responsibilities of area agencies is included to reinforce the mission of the area agency to provide leadership in coordinating plans and activities with other organizations in the planning and service area concerned with the well-being of older persons. The revised policy language reflects the particular concern of Congress that the area agency assure that services provided throughout the planning and service area meet the needs of low income and minority older persons. Current rules in this area are found at § 1321.65.

Section 1321.63 Purpose of service allotments under Title III.

A new section is proposed related to service allotments under Title III to emphasize that services funded under Title III are intended to assist in the development or enhancement of comprehensive and coordinated service systems throughout each State. Each category of service listed in paragraph (a), except for ombudsman services, is subject to the requirement of allocation of funds through an intrastate formula that takes into account the geographical distribution of individuals aged 60 or older in the State and the proportion of older persons in greatest economic and social need with particular attention to low-income minority individuals. The intrastate formula shall also provide that for funds received for preventive health services, the State give priority to planning and service areas which are medically underserved as well as have large numbers of individuals who have the greatest economic and social need for such services. These categories of service are also subject to the requirement of a non-federal contribution of not less than 15 percent in matching funds.

Sectin 1321.65 Responsibilities of service providers under area plans.

This section proposes to add an assurance from area agencies, as required by section 13(a) of the 1987 Amendments, to define what a service provider shall provide to the area agency before the area agency awards Title III funds. The provider shall assure that its services will contribute to the goal of developing responsive community-based systems and assure the timely submission of statistical and other information necessary for the area agency to plan, coordinate and evaluate its programs, and meet reporting requirements to the State. The service provider is further required to specify the outreach efforts that it will undertake to assure that it serves low income minority individuals in proportion to their numbers in the older population of the service area, and that services provided under Title III will be coordinated with other services in the area, and will not unnecessarily duplicate services available from other sources.

Section 1321.67 Service contributions.

This section clarifies the provision in current § 1321.69 that, as with other services under Title III, no means test may be used to determine the eligibility of older persons for the new in-home services program under section 343 of the Act.

Section 1321.69 Service priority for frail, homebound or isolated elderly.

This section reaffirms expectations that area agencies and service providers give priority to providing services to frail, homebound or isolated older persons. It reiterates § 1321.71 in the current regulations which, under criteria established by the area agency, also authorizes home-delivered meals for the spouse of the homebound older person.

Section 1321.71 Legal assistance.

Section 307(a)(15)(A) of the Act requires that the State plan contain an assurance that any recipient of funds for legal assistance "* * * will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act * * * as determined appropriate by the Commissioner." This provision was first included in the Act in the 1978 amendments. Accordingly, the Title III regulations which were issued in 1980 drew upon the regulations of the Legal Services Corporation (LSC) in covering the provision of legal services under the Older Americans Act. However, based on the Commissioner's statutory responsibility to determine which LSC regulations were appropriate to Title III, the treatment of legal services in the 1980 regulations was limited so as to be proportionate to the coverage of other services provided under Title III. In 1985, when the current Title III regulations were issued, a different approach to the teatment of legal services was adopted. At that time,

the coverage of legal services was significantly expanded with the result that legal assistance regulations constituted approximately one-quarter of the entire Title III regulations. This extensive coverage was disproporationate to the coverage of other services provided under Title III. It should be stated that even in this extended discussion of legal assistance, many of the LSC regulations were not included in the Title III regulations.

After reassessing the current regulations in preparation for revisions to accommodate the 1987 amendments to the Act, it was concluded that the extensive discussion of legal assistance was inappropriate for the following reasons: (1) Under regulatory reform unnecessary regulations in other areas of the Title III program have been reduced; (2) While legal assistance is important, it is one among many services which are provided with Title III funds; and (3) The detailed definitions of lobbying activities set forth in current LSC regulations (issued July 29, 1987 at 52 FR 28434) are not needed to carry out the purposes of Title III.

Since the States are provided the greatest possible flexibility in the manner in which other services are provided, the extent of regulatory detail in the treatment of legal assistance has been reviewed and commensurately reduced. The revised regulation seeks to assure that Title III legal assistance funds are used solely to carry out the purposes of the Act and not for extraneous activities, such as lobbying and other political activities. Thus, the intent of these regulations is the same as that of the LSC regulations but offered without the same level of detail.

Section 1321.73 Grant related income under Title III–C.

A new section is added which clarifies the use of grant related income. In general, use of grant related income is governed by 45 CFR Part 74, Subpart F, § 74.42, except that the use of program income as discussed in § 74.42(c), the deductive alternative, is not permitted. The Department has determined that the Act does not permit the use of the deductive alternative for utilizing program income from nutrition services because section 307(a)(13)(C)(ii) of the Act requires program income to be used to expand the services of Title III Part C projects.

Part 1326—Grants to Indian Tribes for Support and Nutritional Services

There are only two changes to the current regulations for this Part. The first is to change the number for this Part from 1328 to 1326. This was done to make the Part number for the American Indian program precede the Part number for the program for older Native Hawaiians. This reflects the prior existence of the Indian program and its placement in the Act. The second change, which is in § 1326.19(d)(1), decreases from 60 to 50 the number of Indians aged 60 or older needed by a tribe to apply for a grant under this Part. This latter change is required by section 612(a)(1) of the amended Act. *For this part, we are soliciting comments only on this decrease in the number of Indians needed by a tribe to apply for a grant.*

Part 1328—Grants for Supportive and Nutritional Services to Older Hawaiian Natives

The regulations for this Part are nearly identical to the current regulations in Part 1328 for Grants To Indian Tribes. This is because the amendments to the Act creating the program for older Hawaiian Natives are similar to the existing program for American Indian elders. *Part 1328 is for an entirely new program, and we will, therefore, accept comments on all sections of this part.*

Section 1328.3 Definitions.

The definition of "Hawaiian Native" is taken from section 625 of the Act and the definition of "Older Hawaiian" is taken from sections 622 of the Act.

Section 1328.21 Application approval.

This section stipulates that the Commissioner approves grants for specific amounts and time periods without any implied obligation to renew, extend, or supplement the grant at any time in the future. The Commissioner also stipulates that preference may be given to eligible applicant organizations that have prior experience in serving Hawaiian Natives. These provisions are proposed to help assure successful development and implementation of the program.

Impact Analysis

Executive Order 12291

The Secretary has determined, in accordance with Exeuctive Order 12291, that these rules do not constitute a major rule because they will not have an annual effect on the economy of $100 million or more; result in major increase in costs or prices for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. We do not believe that there will be any additional costs under these rules since the types of statutorily mandated data we will collect are ordinarily utilized by States for efficient program management.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have significant economic impact on a substantial number of "small entities", i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

The responsibility for meeting the requirements of these regulations is on the State agencies and to a lesser extent on area agencies. Actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under grants or contracts from State or area agencies. Although area agencies and most service delivery agencies and organizations are "small entities" within the meaning of the Act, this rule will impose no significant burdens on State agencies, area agencies or other affected parties and will provide flexibility to State and area agencies in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant impact on a subsantial number of small entities.

Executive Order 12606

The Secretary has determined, in accordance with Executive Order 12606, that these rules have been assessed in light of the family policymaking criteria of the Order and these rules have no significant potential negative impact on family well-being and will enhance family well-being. A certification to this effect will be transmitted to the Office of Management and Budget.

Recordkeeping and Reporting Requirements

Sections 202, 305, 306, 307, 614, and 623 of the Act require collection of data, area and State plans and Native American organization applications. These rules at §§ 1321.17, 1326.19 and 1328.19 contain revised information collection requirements. The Act requires the Commissioner each fiscal year to collect from States statistical data on programs and activities carried out with funds provided under the Act. The data must include for each type of

service: the aggregate amount of funds expended, the number of individuals served, and the number of units of service provided. Additionally, the data must indicate the number of senior centers funded and the extent to which area agencies satisfied their statutory requirements concerning expenditure of adequate funds on specified services and targeted services to older persons in greatest need. In responding to new statutory data collection requirements, AoA will be sensitive to avoiding any needless burden on State and area agencies. AoA will provide States with an opportunity to comment on revised information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of these revised information collection requirements to the Office of Management and Budget (OMB) for its review.

OMB has not approved the revised information collection requirements contained in these rules. The new information collection requirements contained in §§ 1321.17, 1326.19 and 1328.19 will not go into effect until OMB approval has been obtained. Although OMB has not approved the sections of these regulations associated with the development of State and area plans and Native American organization applications, those statutory activities required to maintain eligibility for funding remain in effect. When OMB assigns information collection approval numbers, we will publish a notice in the **Federal Register.**

List of Subjects

45 CFR Part 1321

Administrative practice and procedure, Aged, Grant program/social programs, Nutrition, Reporting requirements.

45 CFR Part 1326

Administrative practice and procedures, Aged, Grant programs Indians, Reporting requirements.

45 CFR Part 1328

Administrative practice and procedures, Aged, Grant programs Hawaiian Natives, Reporting requirements.

(Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging, Title III Part A and B-Grants on Aging: 13.635 Special Programs for Aging, Title III Part C-Nutrition Services); (13.655 Special Programs for Aging-Title VI-Grants for Indian Tribes)

Dated: February 26, 1988.

Carol Fraser Fisk,

Commissioner on Aging.

Approved: March 3, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set forth in the Preamble, Chapter XIII, Subchapter C, of TItle 45, Subtitle B, Code of Federal Regulations is proposed to be amended as follows:

1. Part 1321 is revised as follows:

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Introduction

Sec.

1321.1 Basis and purpose of this part.
1321.3 Definitions.
1321.5 Applicability of other regulations.

Subpart B—State Agency Responsibilities

1321.7 Mission of the State agency.
1321.9 Organization and staffing of the State agency.
1321.11 State agency policies.
1321.13 Advocacy responsibilities.
1321.15 Duration, format and effective date of the State plan.
1321.17 Content of State plan.
1321.19 Amendments to the State plan.
1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.
1321.23 Notification of State plan or plan amendment approval.
1321.25 Restriction of delegation of authority to other agencies.
1321.27 Public participation.
1321.29 Designation of planning and service areas.
1321.31 Appeal to Commissioner.
1321.33 Designation of area agencies.
1321.35 Withdrawal of area agency designation.
1321.37 Intrastate funding formula.
1321.41 Single State planning and service area.
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1321.45 Transfer between congregate and home-delivered nutrition service allotments.
1321.47 Statewide non-Federal share requirements.
1321.49 State agency maintenance of effort.
1321.51 Confidentiality and disclosure of information.
1321.52 Evaluation of unmet need.

Subpart C—Area Agency Responsibilities

1321.53 Mission of the area agency.
1321.55 Organization and staffing of the area agency.
1321.57 Area agency advisory council.
1321.59 Submission of an area plan and plan amendments to the State for approval.
1321.61 Advocacy responsibilities of the area agency.

Subpart D—Service Requirements

1321.63 Purpose of services allotments under Title III.
1321.65 Responsibilities of service providers under area plans.
1321.67 Service contributions.
1321.69 Service priority for frail, homebound or isolated elderly.
1321.71 Legal assistance.
1321.73 Grant related income under Title III–C.
1321.75 Licenses and safety.

Subpart E—Hearing Procedures for State Agencies

1321.77 Scope.
1321.9 When a decision is effective.
1321.81 How the State may appeal.
1321.83 How the Commissioner may reallot the State's withheld payments.

Authority: 42 U.S.C. 3001 et seq.; Title III of the Older Americans Act.

Subpart A—Introduction

§ 1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under Title III of the Older Americans Act, as amended (Act). These requirements include:

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with greatest economic or social need, with particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use Title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area to serve as its agent in building comprehensive systems for older people throughout the State. Area agencies in

turn make subgrants or contracts to service providers to perform certain specified functions.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended.

"Administrative action," as used in section 307(a)(12)(A) of the Act with respect to the investigation and resolution of complaints under long-term care ombudsman programs, means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a government agency, which affects the provisions of service to residents covered under the long term care program.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department" means the Department of Health and Human Services.

"Direct services," as used in this Part, means any activity performed to benefit an older individual by the staff of an area agency or by staff of a State agency in a single planning and service area State.

"Fiscal year," as used in this Part, means the Federal Fiscal Year.

"Frail," as used in this Part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal tasks or which threatens the capacity of an individual to live independently.

"Human services," as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

"In-home service," as used in this Part, includes: (A) Homemaker and home health aides; (B) visiting and telephone reassurance; (C) chore maintenance; (D) in-home respite care for families, including adult day care as a respite service for families; and (E) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than $150 per client may be expended under this Part for such modification.

"Means test," as used in the provision of services, means the use of an older person's income or resources to deny or limit that person's receipt of services under this Part.

"Official duties," as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

"Periodic," as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

"Reservation," as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 State. 688), and Indian allotments.

"Service provider," as used in section 306(a)(1) of the Act with respect to the provision of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"Severe Disability," means a severe chronic disability of an individual that—(a) is likely to continue indefinitely; and (b) results in substantial functional limitation in 3 or more of the following major life activities: (1) Self-care, (2) Receptive and expressive language, (3) Learning, (4) Mobility, (5) Self-direction, (6) Capacity for independent living, and (7) Economic self-sufficiency.

"Significant population," as used in section 306(a)(6)(N) of the Act with respect to older Indians in the planning and service area, means that at least 50 persons eligible for services under the Act in the area are older Indians.

§ 1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR Part 16—*Procedures of the Departmental Grant Appeals Board;*

(b) 45 CFR Part 74—*Administration of Grants,* except Subpart N;

(c) 45 CFR Part 80—*Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;*

(d) 45 CFR Part 81—*Practice and Procedures for Hearings Under Part 80 of this Title;*

(e) 45 CFR Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Participation;*

(f) 45 CFR Part 91—*Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;*

(g) 45 CFR Part 100—*Intergovernmental Review of Department of Health and Human Services Programs and Activities;* and

(h) 5 CFR Part 900, Subpart F, *Standards for a Merit System of Personnel Administration.*

Subpart B—State Agency Responsibilities

§ 1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging to be the principal agents of the State to carry out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those local agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in § 1321.53 below.

§ 1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State Plan required under this Part and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this Part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

§ 1321.11 State agency policies.

The State agency shall develop policies governing all aspects of programs operated under this Part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies. The State agency is responsible for enforcement of these policies.

§ 1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organization, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirements in this section shall be deemed to supersede statutory or other regulatory restrictions regarding lobbying or political advocacy with Federal funds.

§ 1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as identified in § 1321.17, becomes effective on the date designated by the Commissioner.

(c) An agency may not make expenditures under a new plan or amendment, as identified in § 1321.17, until it is approved.

§ 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the single State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all Title III funds directly administered by a State agency, and the distribution of Title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a)(23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this Part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages solely in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this Part are provided without use of any means tests;

(4) All services provided under Title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to contribute voluntarily to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals;

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities that reside in a non-institutional household with and accompany a person eligible for congregate meals under this Part shall be provided a meal on the same

basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

§ 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations,

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a)(23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under § 1321.17(a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17(b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

§ 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart E.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

§ 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

§ 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

§ 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice of the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner upholds the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this Part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with

the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180 day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c);

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest economic and social need for such services.

§ 1321.41 Single State planning and service area.

(a) The Commissioner approves the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this Part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) of this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§ 1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, all applicable requirements and procedures in § 1321.29 and § 1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§ 1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency shall:

(1) Specify the percent which a State agency proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a portion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§ 1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds used under this part. All services statewide, including ombudsman services and services funded under Title III–B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual area agencies are determined by the State agency.

§ 1321.49 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-Federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for

supportive and nutrition services under this Part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this Part to reveal any information that is protected by attorney client privilege.

(d) The director of the State agency, or other legitimately authorized superior of the State ombudsman and of representatives of the Ombudsman Office, as specified in State policies under § 1321.17(f)(6), shall have access to the files of the State ombudsman or representatives of the Office in order to carry out the State's responsibilities for the ombudsman program.

§ 1321.52 Evaluation of unmet need.

Each State shall submit objective and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989, and shall conform to guidance issued by the Commissioner.

Subpart C—Area Agency Responsibilities

§ 1321.53 Mission of the area agency.

(a) The Older Americans Act intends that the area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible

(b) A comprehensive and coordinated community based system described in (a) of this section shall:

(1) Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;

(2)Provide a range of options;

(3) Assure that these options are readily accessible to all older persons: the independent, semi-dependent and totally dependent, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve vollaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;

(6) Offer special help or targetted resources for the most vulnerable older persons, those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency shall work with community leadership in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define "community" for the purposes of this section. Since the Older Americans Act defines focal point as a "facility" established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multi-purpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

§ 1321.55 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A single organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency; or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

§ 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officals; and

(7) The general public.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policy manual prescribed by § 1321.17.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Undertake activities on a regular basis designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services most needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this Part to employ a means test.

(d) No requirements of this section shall be deemed to supersede statutory or other regulatory restrictions regarding lobbying or political advocacy with Federal funds.

Subpart D—Service Requirements

§ 1321.63 Purpose of service allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:

(1) Supportive services;

(2) Congregate meals services;

(3) Home delivered meals services;

(4) In-home services;

(5) Ombudsman services;

(6) Special needs services;

(7) Elder abuse services;

(8) Preventive health services.

Funds authorized under these categories are for the purpose of assisting the State agency to develop or enhance comprehensive and coordinated community based systems for older persons described in 1321.53(b) throughout the State.

(b) Except for ombudsman services, State agencies on aging award the funds made available under paragraph (a) above to designated area agencies on aging in keeping with the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this Part are for the purpose of assisting area agencies to develop or enhance comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area.

§ 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population served by the provider;

(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this Part are coordinated with other appropriate services in the

community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.67 Service contributions.

For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that:

(a) Each service provider shall:

(1) Provide each older person with an opportunity to contribute voluntarily to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions only to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(C)(ii) of the Act.

(b) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(c) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

§ 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

§ 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to deliver legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement from out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by an nonjudicial Federal, State or local individual or body.

(1) Nothing in this section is intended to prohibit an employee from:

(i) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(ii) Informing a client about a new or proposed statute, executive order, or administrative regulation consistent with the requirements of paragraph (k) of this section:

(iii) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law. This provision does not authorize publication or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(iv) Making direct contact with the area agency for any purpose.

(2) A provider may use funds provided by private sources to:

(i) Engage in lobbying activities if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities of the provider under the Act.

(ii) Pay reasonable annual dues to organizations which are tax exempt under section 501(c) of the Internal Revenue Code, provided, however, that such funds may be used only for purposes otherwise permitted by the Act and all regulations adopted pursuant thereto.

(j) While carrying out legal assistance activities and while using resources provided under the Act, by private entities or by a recipient, directly or through a subrecipient, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be directly used.

§ 1321.73 Grant related income under Title III-C.

The use of grant related income under section 307(a)(13)(c)(ii) of the Act is governed by Title 45 Code of Federal Regulations Part 74 Subpart F, § 74.42, except that the use of program income as discussed in § 74.42(c), deductive alternative, is not permitted.

§ 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

Subpart E—Hearing Procedures for State Agencies

§ 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the provisions of 45 CFR Part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 231.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), hearing procedures described in this subpart apply to nature and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment:

(2) Determination that a State agency does not meet the requirements of this part:

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including the failure to comply with any assurance required under the Act or under this part.

§ 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appear, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.81 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State the final decision of the Commissioner disapproving the State plan or amendment, finding noncompliance, or finding that a State agency does not meet the requirements of this part. The State shall file the appeal within 30 days of the Commissioner's final decision.

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit organization or agency, or political subdivision of the State agency and submits a State plan which meets the requirements of this Part and which contains an agreement to meet the non-federal share requirements.

2. Part 1328 is redesignated as Part 1326 and revised to read as follows:

PART 1326—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITIONAL SERVICES

Sec.

1326.1 Basis and purpose of this part.
1326.3 Definitions.
1326.5 Applicability of other regulations
1326.7 Confidentiality and disclosure of information.
1326.9 Contributions.
1326.11 Prohibition against supplantation.
1326.13 Supportive services.
1326.15 Nutrition services.
1326.17 Access to information.
1326.19 Application requirements.
1326.21 Application approval.
1326.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

§ 1326.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations.

This Part implements Title VI (Part A) of the Older American Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III This part also

prescribes application and hearing requirements and procedures for these grants.

§ 1326.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Altering" or "renovating" as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1326.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Indian reservation," means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with alloted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

"Indian tribe," means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 State. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of the status as Indians (25 U.S.C. 450b).

"Means test," as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person receipt of services under this part.

"Older Indians," means those individuals who have attained the minimum age determined by the tribe for services.

"Project period," as used in § 1326.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1326.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation any portion of a county or counties which have a common boundary with the reservation. A service area may also include a non-contiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

"Service provider," means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

"Tribal organization," as used in § 1326.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is a democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequiste to the letting or making of the contract or grant (25 U.S.C. 450b).

§ 1326.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—*Procedures of the Departmental Grant Appeals Board;*

(b) Part 74—*Administration of Grants;*

(c) Part 75—*Informal Grant Appeals Procedures;*

(d) Part 80—*Nondiscriminatin Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;*

(e) Part 81—*Practice and Procedure for Hearings Under Part 80 of This Title;*

(f) Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and*

(g) Part 91—*Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS.*

§ 1326.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1326.9 Contributions.

(a) Each tribal organization shall:

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indians a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1326.11 Prohibition against supplantation.

A tribal organization shall ensure that the actives provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1326.13 Supportive services.

(a) A tribal organization may provide any of the supportive services mentioned under Title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1326.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to non-elderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided; and

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreeement to be a distributing agency with the U.S. Department of Agriculture's Food and Nutrition Service (FNS).

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1326.17 Access to information.

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area,

(b) Maintain a lost of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1326.19 Application requirements.

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization:

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoke by a predominant number of older Indians;

(4) Procedures to ensure that all services under this Part are provided without use of any means tests; and

(5) A tribal organization shall comply with all requirements set forth in §§ 1326.7 through 1326.17.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1326.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1326.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated offical conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

3. A new Part 1328 is added to read as follows:

PART 1328—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES

Sec.

1328.1 Basis and purpose of this part.
1328.3 Definitions.
1328.5 Applicability of other regulations.
1328.7 Confidentiality and disclosure of information.
1328.9 Contributions.
1328.11 Prohibition against supplantation.
1328.13 Supportive services.
1328.15 Nutrition services.
1328.17 Access to information.
1328.19 Application requirements.
1328.21 Application approval.
1328.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

§ 1328.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives.

This part implements Title VI (Part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

§ 1328.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Act," means the Older Americans Act of 1965, as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Eligible organization," means a public or nonprofit private organization having the capacity to provide services under this Part for older Hawaiian Natives.

"Grantee," as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

"Hawaiian Native," as used in this part, means any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

"Means test," as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person's receipt of services under this part.

"Older Hawaiian," means any individual, age 60 or over, who is an Hawaiian Native.

"Project period," as used in § 1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1328.9(b) and elsewhere in this Part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

§ 1328.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) Part 16—*Procedures of the Departmental Grant Appeals Board;*

(b) Part 74—*Administration of Grants;*

(c) Part 75—*Informal Grant Appeals Procedures;*

(d) Part 80—*Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;*

(e) Part 81—*Practice and Procedures for Hearings Under Part 80;*

(f) Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits From Federal Financial Participation;* and

(g) Part 91—*Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS.*

§ 1328.7 Confidentiality and disclosure of information.

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1328.9 Contributions.

(a) Each grantee shall:

(1) Provide each older Hawaiian Native with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Hawaiian Native with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the grantee shall consider the income ranges of older Hawaiian Natives in the service area and the grantee's other sources of income. However, means tests may not be used.

(c) A grantee may not deny any older Hawaiian a service because the older Hawaiian will not or cannot contribute to the cost of the service.

§ 1328.11 Prohibition against supplantation.

A grantee shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1328.13 Supportive services.

(a) A grantee may provide any of the supportive services mentioned under Title III of the Older Americans Act and any other supportive services, approved in the grantee's application, that are necessary for the general welfare of older Hawaiian Natives.

(b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this Part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.75 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1328.15 Nutrition services.

(a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:

(1) Provide nutrition services to the non-elderly spouses of older Hawaiian Natives;

(2) Provide nutrition services to non-elderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided; and

(3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours.

(b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement to be a distributing agency with the U.S. Department of Agriculture's Food and Nutrition Service (FNS).

(c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

§ 1328.17 Access to information.

A grantee shall:

(a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;

(b) Maintain a list of services needed or requested by the older Hawaiians; and

(c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

§ 1328.19 Application requirements.

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 623(a)(6) of the Act, and any objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State Agency and Area Agency on Aging;

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this Part are provided without use of any means tests; and

(5) The eligible organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17.

(e) Signature by the principal official of the eligible organization.

§ 1328.21 Application approval.

(a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved or portion thereof.

(b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

§ 1328.23 Hearing procedures.

In meeting the requirements of section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the organization's request.

(c) The Commissioner notifies the organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designate official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents,

exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the organization.

(i) Either the organization or the staff of the Administration on Aging may request, for good cause, an extension of any of the time limits specified in this section.

[FR Doc. 88-6577 Filed 3-28-88; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 74, and 90

[Gen. Docket No. 85-171; FCC 88-65]

Revisions of the Rules Regarding Equipment Authorization Procedures; Public Mobile Service; Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; and Private Land Mobile Radio Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rules.

SUMMARY: Changes are proposed in Parts 2, 22, 74, and 90 of the Rules to allow use of radio technologies in the land mobile radio bands that do not meet the conventional technical standards of existing mobile radio rules.

The Notice of Inquiry and Proposed Rule Making solicited public comment on an equipment testing and authorization procedure called alternative type acceptance (ATA). By making tests with a "standard" receiver, the compatibility of a new radio technology with existing FM land mobile radio would be assured. While generally agreeing with the concept of ATA, the commenters thought that the "standard" receiver and frequency coordination constituted significant problems.

The present action proposes a different methodology for ATA to deal with the problems raised. This methodology uses characteristics of existing FM land mobile transmitters to define the power and bandwidth of new radio technologies.

DATES: Comments must be received on or before June 20, 1988, and Reply Comments must be received on or before July 20, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hector Davis, Engineering Evaluation Branch, Office of Engineering and Technology, (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making in Gen. Docket No. 85-171, FCC 88-65, Adopted February 25, 1988, and Released on March 22, 1988.

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

Summary of Further Notice of Proposed Rule Making

1. The objective of this proposal is to add alternative type acceptance (ATA) procedures for equipment authorized in the mobile communications services. This action will permit the introduction of new technologies into the existing mobile radio bands without time-consuming rule making proceedings. Applicants using ATA will not have to disclose the technical details of the application to competitors prior to grant as would be the case in a rule making proceeding. The Commission believes that the proposed rules preclude any more interference from new technologies than results from existing mobile services.

2. It should be noted that the use of ATA is optional. Existing type acceptance procedures are retained. Amendments are proposed for Part 2 to include the optional ATA procedures. Parts 22, 74, and 90 are amended to allow the use in the mobile services of equipment authorized under ATA. We believe that the matter of interference to land mobile services has been satisfactorily addressed. Interference to other authorized services should not occur. ATA equipment will not be permitted in UHF television channels shared by land mobile radio services. This restriction is necessary due to the limited testing in this environment.

3. In order to incorporate the above proposals into the rules, a new § 2.990 is added. Changes are required for the following rule sections: 22.120, 74.451, 90.203, 90.217, and 90.231. Comments are requested on the proposed changes to the rules.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231 for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities bacause it relaxes the Commission's rules and reduces the Commission's application burden. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no additional information collection requirement on the public. Implementation of a modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

List of Subjects

47 CFR Part 2

Type acceptance.

47 CFR Part 22

Technical standards.

47 CFR Part 74

Remote pickup broadcast stations.

47 CFR Part 90

General technical standards.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-6768 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-106; RM-4997]

Radio Broadcasting Services; Blythe, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a proposal to allot Channel 219A to Blythe, California, as requested by the Escuela de la Raza Unida, based on the Commission's recent amendment of its Rules to provide for a "demand" system for NCE-FM services located within 199 miles of the United States-Mexico border area. As a result, the Blythe

proposal may be considered in the application context rather than the rule making process. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-106, adopted February 11, 1988, and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88-6777 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-108, RM-6085]

Radio Broadcasting Services; Yreka, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Dalmatian Enterprises Inc. licensee of Station KYRE(FM) (Channel 249A), Yreka CA, proposing the substitution of FM Channel 249C1 for Channel 249A and modification of its Class A license accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before May 9, 1988, and reply comments on or before May 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Esq., Arent, Fox, Kintner Plotkin & Kahn, 1050 Conn. Ave., NW., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-108, adopted February 25, 1988, and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6776 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-109, RM-5957]

Radio Broadcasting Services; Basalt, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Basalt Communications Company, seeking the allotment of FM Channel 291A to Basalt, Colorado, as that community's first local broadcast service.

DATES: Comments must be filed on or before May 10, 1988, and reply comments on or before May 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Basalt Communications Company, Attn: Dan and Caren Lacy, 1885 Ponder Heights Drive, Colorado Springs, CO 80906.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-109, adopted February 25, 1988, and released March 21, 1988. The full text of this Commission is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6778 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-111, RM-5359]

Radio Broadcasting Services; Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Treasure Coast Broadcasting Company, licensee of Station

WGYL(FM) Vero Beach, Florida, which seeks to substitute Channel 229C2 for Channel 228A at Vero Beach, and to modify its Class A license accordingly.

DATES: Comments must be filed on or before May 10, 1988, and reply comments on or before May 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, NW., Suite 1000, Washington, DC 20005.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–111, adopted February 16, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88–6780 Filed 3–28–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–99, RM–6074]

Radio Broadcasting Services; Cornelia and Chatsworth, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Habersham Broadcasting Co., licensee of Station WCON–FM, Cornelia, Georgia, which seeks to substitute Channel 257C2 for Channel 257A, and to modify its license to the new channel (coordinates 34–30–57—83–32–20). In order to permit the proposed modification, petitioner has requested that Channel 255A be substituted for Channel 257A at Chatsworth, Georgia, and the license for Station WQMT(FM), modified to specific Channel 255A (coordinates 34–45–29—84–43–59). In order to obtain the consent of Station WQMT to change from Channel 257A to Channel 255A, we are issuing the licensee an *Order to Show Cause*.

DATES: Comments must be filed on or before May 9, 1988, and reply comments on or before May 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Edward W. Hummers, Jr., Frank R. Jazzo, Fletcher, Heald and Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–99, adopted February 11, 1988 and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88–6775 Filed 3–28–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–110, RM–6134]

Radio Broadcasting Services; Los Ybanez, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Israel Ybanez proposing the allocation of Channel 300C2 to Los Ybanez, Texas, as that community's first local FM service. Additional information has been requested from the petitioner as to the community status of Los Ybanez. Concurrence of the Mexican government is required. The coordinates used for the proposal are 32–44–06 and 102–00–00.

DATES: Comments must be filed on or before May 10, 1988, and reply comments on or before May 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant as follows: James K. Edmundson, Esquire, Kenkel, Barnard & Edmundson, 1220 Nineteenth Street NW., Suite 202, Washington, DC 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–110, adopted February 24, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–6779 Filed 3–28–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 252

Department of Defense Federal Acquisition Regulation Supplement; Antifriction Bearings

AGENCY: Department of Defense (DoD)

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering adding a new subpart 208.79 to the Defense Federal Acquisition Regulation Supplement to restrict procurement of antifriction bearings and bearing components for use by the DoD to domestic sources. This restriction was deemed necessary to protect and strengthen the domestic industrial base for an industry critical to National security.

DATE: Comments on the proposed addition should be submitted in writing to the Executive Secretary, DAR Council at the address shown below, on or before April 28, 1988, to be considered in the formulation of the final rule. Please cite the DAR Case number 88–35 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, OUSD(A) (M&RS) Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory E. Saunders, Assistant for Commerical Acquisition, OASD(P&L)PS/SDM, Room 2A318, Pentagon, Washington DC 20301–8000, telephone (202) 695–7915.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed restriction to domestic sources of procurement of antifriction bearings for DoD use has been determined to be necessary to protect an industry that is critical to National security. In response to a House Appropriation Committee Report request in 1985, the Joint Logistics Commanders (JLD) were asked to conduct a study of the antifriction bearing industry. The report, published in June 1986, documented a number of disturbing trends. The foreign share of ball and roller bearings was between 30% and 40% and increasing. The commercial segment of the bearing industry was deteriorating, thereby placing a larger cost burden on the military market and depleting the capacity of the industry to respond to surges in demand. Defense production was becoming the major market for many domestic producers and foreign competition was eroding that last bastion. A DoD Bearing Action Plan was developed and sent to Congress in March 1987, that proposed solutions to many of the problems identified in the JLC study. Both the House and Senate Appropriations Reports for 1988 (100–410 and 100–235) and the Continuing Appropriations Report (100–498) indicated that DoD should implement the plan expeditiously, with certain exemptions. The Secretary of Defense has received numerous letters of concern over the continuing decline of the bearing industry, from members of the Congressional Bearing Caucus. The Caucus consists of members of the House of Representatives who represent states with interests in the bearing industry such as Connecticut, Michigan, New York, Ohio, Pennsylvania and South Carolina. In letters dated December 10 and 21 1987, and February 11, 1988, members expressed concern regarding the slow progress of the implementation of the Bearing Action Plan, and especially the proposed procurement restriction. They recently requested the Department's support for a Department of Commerce "section 232" petition filed by the domestic bearing industry to seek even further relief than that provided by the DoD's activities.

The essence of the proposed procurement restriction is to restrict the procurement of all antifriction bearings for DoD use, over the next three years, to domestic sources. At the end of that period, the restriction may be extended an additional two years if the progress of the domestic bearing industry toward becoming competitive appears to warrant such consideration. This restriction will apply to bearings as end items and end items containing bearings. The restriction will be applied to all new contracts and to the exercise of options in existing contracts. The following exemptions will apply:

1. Commercial-off-the-shelf products.
2. Products for Government to Government co-production, or co-development projects.
3. Existing contracts with NATO/MOU countries, which will be phased in over an eighteen month period.
4. Situations where cost or schedule impact is sufficiently severe to require the use of foreign bearings.
5. Certain situations where a manufacturer has a corporate headquarters in a NATO nation and a United States subsidiary which exports bearings.
6. Purchases of foreign products overseas for overseas use.
7. Small purchases using simplified purchase procedures.

B. Regulatory Flexibility Act

The proposed coverage at Subpart 208.79 is not expected to have a significant impact on small businesses. It will impact only those small businesses that (1) manufacture antifriction bearings, or (2) use antifriction bearings in a subassembly, assembly, or end item sold to the DoD either directly or through a sub-contract with a DoD contractor. Although there is no existing data to quantify the number of small businesses which may be impacted, it is estimated that only a small quantity will be affected. Further, because the restriction will be applied across the board giving the same advantages and disadvantages to all, and because commercial items are exempted from the restriction, any impact is expected to be minimal. Therefore an Initial Regulatory Act Analysis has not been prepared. Comments on this determination are solicited.

C. Paperwork Burden

It is expected that the proposed coverage will impose an additional burden on contractors. A paperwork

burden clearance is being prepared for submission to OMB.

The burden to be placed on contractors is in the form of contractors developing and maintaining records for three years showing compliance with the clause at 252.208-7006. It is estimated that approximately 100,000 contracts will be affected, and that the requirement should increase the paperwork burden by approximately 4 hours per contract. This is the time it should take contractors to ensure that sub-contractors are complying with the clause. Additionally, approximately 350 contractors may be required to submit plans for phasing in the purchase of domestic manufacture bearings to replace those of other than domestic manufacture. This requirement will increase the paperwork burden by approximately 110 hours per contractor.

List of Subjects in 48 CFR Parts 208 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 208 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 208 and 252 continues to read as follows:

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

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. A new Subpart 208.79, consisting of sections 208.7901 through 208.7903, is added to read as follows:

Subpart 208.79—ANTIFRICTION BEARINGS

Sec.

208.7901 Definitions.
208.7902 Policy.
208.7903 Procedures.

Subpart 208.79—Antifriction Bearings

208.7901 Definitions.

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada;

"Commercial product" as used in this subpart, means a product, such as an item, material, component, subsystem, or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804-3(c) for explanation of terms);

"Commercial-type product" as used in this subpart, means a commercial product (a) modified to meet some Government-peculiar physical requirement or (b) otherwise identified differently from its normal commercial counterparts;

"Other authorized manufacture" as used in this subpart, means wholly manufactured by a company with its corporate headquarters in a NATO participating country (see DFARS 225.001) and which has a US subsidiary which exports domestic manufactured bearings. However a manufacturer's bearings are included within this term only to the extent that: (a) The total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the value of bearings exported by its U.S. subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/specialty bearings imported for sale to DoD and its contractors does not exceed the total value of such bearings imported in calendar year 1987; and "Super-precision Bearings" as used in this subpart means bearings having a precision classification of ABEC/RBEC 5 or higher.

"Custom/specialty Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5.

208.7902 Policy.

(a) It has been determined that the ability of the U.S. bearing industry to meet industrial surge and mobilization requirements for bearings is in serious jeopardy. In view of the national security significance of bearings, the DoD has determined that except as provided in paragraph (b) below, all bearings or components of bearings procured directly or indirectly (installed in defense end-items and subassemblies) shall be wholly manufactured by the domestic industrial base as specified below:

(b) The restriction applies to all sizes and grades of bearings and bearing components procured for, but not limited to:

(1) all military end-items and components

(2) weapon systems in the development stage· and

(3) spare parts, Government Furnished Material, and repair or refurbishment.

(c) The restriction in paragraph (a) above does not apply to:

(1) Miniature and instrument bearings which are restricted by DFARS SUBPART 208.73;

(2) Rod-end and spherical bearings for contracts entered into prior to (DATE—24 months from the effective date of the clause);

(3) Bearings and bearing components manufactured by a company in a qualifying country (see DFARS 225.001) for contracts entered into prior to (DATE—six months from the effective date of the clause).

208.7903 Procedures.

(a) The clause set forth at 252.208-7006, Required Sources for Antifriction Bearings, shall be inserted in all solicitations and contracts and in the exercise of options for existing contracts, except:

(1) Those contracts awarded on or after (DATE—three years from the effective date of this clause)

(2) Where the contracting officer knows that the item being procured does not contain bearings;

(3) When purchasing commercial or commerical-type items;

(4) When purchasing other than domestic manufacture items overseas for use overseas;

(5) When the contracting officer determines in writing that inclusion of the clause would not be in the best interest of the U.S. because qualifying a new domestic source would:

(i) Cause unreasonable costs or delays to be incurred;

(ii) Jeopardize the safety and welfare of using personnel;

(iii) Seriously degrade the performance of the item or component; or

(iv) Jeopardize satisfying an urgent military requirement.

(6) When the purchase is from an other-authorized manufacturer;

(7) When for government-to-government co-production and co-development projects;

(8) Small purchases using simplified purchase procedures, other than in purchases of bearings as the end item.

(b) After contract award, the restriction may be waived on a case-by-case basis after a determination by the head of the contracting office:

(1) That any of the conditions of paragraph (a) above are met; or

(2) That lead-times quoted by domestic manufacturers are substantially longer than the most recent average lead-time for the bearing;

(c) Notwithstanding the case-by-case exclusions or waivers in paragraphs (a) and (b) above, the contracting officer shall require the apparently successful

offeror to submit a written plan for transitioning from the use of non-domestic manufacture bearings to bearings of domestic or other authorized manufacture. Such plan shall be incorporated as a requirement in the contract and shall identify:

(1) The bearings, application, and source of supply;

(2) The reason for non-conformance to the clause at 52.208–7006; and

(3) A plan and timetable for providing a domestic manufacture bearing.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.208–7006 is added to read as follows:

252.208–7006 Required Sources for Antifriction Bearings.

As prescribed at 208.7903 insert the following clause:

Required Sources for Antifriction Bearings (1988)

(a) For the purpose of this clause:

"Domestic manufacture" means wholly manufactured in the United States or Canada. When an antifriction bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada;

"Commercial product" means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804–3(c) for an explanation of terms);

"Commercial-type product" means a commercial product (a) modified to meet some Government-peculiar physical requirement or (b) otherwise identified differently from its normal commercial counterparts;

"Other authorized manufacture" means wholly manufactured by a company with its corporate headquarters in a NATO participating country (see DFARS 225.001) and which has a U.S. subsidiary which exports domestic manufactured antifriction bearings. However, a manufacturer's antifriction bearings are included within this term only to the extent that: (a) The total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the value of antifriction bearings exported by its U.S. subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/speciality bearings imported for sale to DoD and its contractors does not exceed the total value of such bearings imported in calendar year 1987;

"Super-precision Bearings" means antifriction bearings having a precision classification of ABEC/RBEC 5 or higher; and

"Custom/speciality Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5.

(b) By submission of its offer, the offeror certifies and agrees that, if awarded a contract, no end item or component thereof delivered under the contract will contain other than antifriction bearings and bearing assemblies that are of domestic manufacture or other authorized manufacture. However this certification and agreement shall not extend to those end items or components thereof which the offeror identifies in its offer as containing bearings that are of other than domestic manufacture provided that the offeror also submits a written plan for transitioning to domestic or other authorized manufacture and identifying how and when this will occur. Such plan will be incorporated into, and made a part of the resulting contract.

(c) The restriction in (b) above may be waived on a case-by-case basis in whole or in part by the head of the contracting office when he determines that no qualified domestic manufacturer is available or that no domestic manufacturer can meet the required delivery date.

(d) The restriction does not apply to end items and components that are commercial or commercial-type items.

(e) The restriction does not apply to the following specific antifriction bearings and components rod-end and spherical bearings for which a contract was signed prior to (DATE—24 months after the effective date);

(f) The contractor agrees to retain for three years from the date of final payment under this contract and to make available during such period, upon request of the contracting officer, records showing compliance with this clause.

(g) The contractor agrees to insert this clause including this paragraph in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no antifriction bearings.

[End of clause.]

[FR Doc. 88–6872 Filed 3–28–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

Red Drum Fishery of the Gulf of Mexico

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

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues notice that the Gulf of Mexico Fishery Management Council has submitted Amendment 2 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce. Comments from the public are invited.

DATE: Comments will be accepted until Saturday, May 21, 1988.

ADDRESSES: Send comments to William R. Turner, Fishery Operations Branch, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Limited copies of the FMP are available at this address.

Copies of Amendment 2 and its supporting documents may be obtained from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609, telephone 813–228–2815.

FOR FURTHER INFORMATION CONTACT: William R. Turner (Plan Coordinator) at 813–893–3722.

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP was prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act. The Magnuson Act requires that the Secretary of Commerce, upon receipt of an FMP amendment, immediately publish notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the amendment.

Amendment 2 proposes to continue the prohibition of harvest or possession of red drum in or from the exclusive economic zone of the Gulf of Mexico which was implemented by emergency rule on January 1, 1988 (53 FR 244, January 6, 1988). The emergency rule expires on June 28, 1988. The purposes of Amendment 2 are (1) to continue protection of the red drum spawning stock from overfishing, (2) to revise the management objectives concerning escapement of juvenile red drum from nearshore/inshore areas to the offshore spawning stock, and (3) to modify the procedure for specifying total allowable catch. Proposed regulations to implement this amendment will be published within 15 days.

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

Dated: March 23, 1988.

Ann D. Terbush,

Acting Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–6827 Filed 3–24–88; 3:54 pm]

BILLING CODE 3510–22–M

50 CFR Part 680

Western Pacific Precious Corals

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public on the amendment and its environmental assessment. Copies of the amendment may be obtained from the Council at the address below.

DATE: Comments on the plan amendment should be submitted on or before May 23, 1988.

ADDRESS: Send comments to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and its environmental assessment are available upon request from the Council at 1164 Bishop Street, Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds (Executive Director, Western Pacific Fishery Management Council), 808–523–1368.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act, which requires that the Secretary, upon receiving a plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 1 proposes the following measures: (1) Include the U.S. Possessions under the FMP as a combined single exploratory area with a 1,000 kg annual harvest quota for all species of precious corals combined (2) place all species of *Corallium* within the management unit species and (3) create an experimental fishing permit system to stimulate domestic development of the coral fishery.

Regulations proposed by the Council that are based on this amendment are scheduled to be published within 15 days.

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

Dated: March 24, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88–6788 Filed 3–24–88; 12:44 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with Implementation of the Bank Holding Company Act: The Adjudicatory Procedures of the Federal Reserve Board, based upon a study by Professor Alfred C. Aman, Jr., of Cornell University. The Committee also expects to discuss a draft report on Federal Home Loan Bank Board Procedures for Determining Claims in Savings Association Liquidations, by Professor Lawrence G. Baxter, of Duke University School of Law. Copies of the Committee's reports may be obtained from the contact person named in this notice.

DATE: Friday, April 8, 1988 at 2:00 p.m.

Location: Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., (202) 254-7020.

Jeffrey S. Lubbers
Research Director.
March 22, 1988.

[FR Doc. 88-6786 Filed 3-28-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-028]

Availability of Environmental Assessment and Finding of No Significant Impact Concerning the Licensure of a Recombinant Derived Modified Live Virus Pseudorabies Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning the issuance of a veterinary biological product license to SyntroVet Incorporated for a recombinant derived modified live virus pseudorabies vaccine. The assessment indicates that the use of the recombinant derived pseudorabies vaccine will not cause any significant impact on the environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service had determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Chief Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its issuance of a U.S. Veterinary Biological Product License (hereinafter, product license) to SyntroVet, Inc., of Lenexa, Kansas. The product license will be issued for a recombinant derived modified live virus pseudorabies vaccine, in accordance with the provisions of the Virus-Serum Toxin Act (VSTA) (21 U.S.C. 151 *et seq.*).

Under the VSTA, before a veterinary biological product can be licensed, it must be shown to be pure, safe, potent, and efficacious. In order to permit the manufacturer to gather data intended to satisfy vaccine safety requirements as a prerequisite to product licensure, APHIS previously approved the field testing of the pseudorabies virus vaccine. In the course of approving the protocol for field testing, APHIS assessed the impact on the human environment resulting from such testing in a limited number of States. The APHIS notice of availability of the environmental assessment and finding of no significant impact for limited field testing was published in the **Federal Register** on September 9, 1987 (see 52 FR 33982-83).

The environmental assessment and finding of no significant impact concerning the issuance of the product license provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with general distribution and use of the pseudorabies vaccine.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. In the development of the SyntroVet pseudorabies virus vaccine, modified live virus (S-PRV-013), genetic engineering procedures were employed to facilitate three gene deletions and one gene insertion in the pseudorabies virus genome. The gene deletions consist of the deletion of the thymidine kinase gene and the gene coding for viral glycoprotein, and a deletion resulting in a nonspecific reduction in virulence. The gene insertion codes for an enzyme, lactase, commonly found in nature and

mammalian cells. The gene deletions and insertion do not increase virulence or the ability of the virus to survive in the environment.

2. The S–PRV–013 vaccine virus was shown to be avirulent and yet fully capable of eliciting an immune response that protects pigs from pseudorabies virus. It did not elicit antibodies to glycoprotein (gpX). The addition of the lactase gene serves to distinguish between S–PRV–013 and wild or other vaccine viruses.

3.

Transmission of S–PRV–013 could not be demonstrated from inoculated pigs.

4. The gene deletions are stable characteristics of the vaccine virus with a probability of reversion being essentially zero. The lactase gene insertion likewise remains stable through repeated passes in culture and in swine.

5. The wild-type pseudorabies virus is found widely distributed in nature, and it does not contain an oncogene or cancer-causing substance. There is no likelihood that S–PRV–013 is oncogenic.

6. The wild-type pseudorabies virus is not considered pathogenic to man. The recombinant vaccine virus differs from the wild-type pseudorabies virus in that it contains the three deletions and insertion on an innocuous gene. The vaccine virus is considered nonpathogenic in man.

7. The recombinant derived modified live virus vaccine was shown to be safe in a variety of field tests.

8. Field safety testing was satisfactorily conducted in 156 baby pigs. Attempts to reisolate the virus from 86 pigs were negative.

9. Field safety tests were also satisfactorily completed in 222 weaned pigs. Average daily gains of vaccinates were slightly higher than those of unvaccinated cohort controls.

10. The vaccine was administered to 22 sows. Concurrently, a licensed inactivated pseudorabies vaccine was administered to a control group on the same farm. No adverse reactions were noted to the SyntroVet vaccine and litter viability and weight gain at weaning were similar between the two test groups.

11. The results from an additional safety and efficacy test conducted in containment facilities showed that the vaccine was safe and efficacious when administered to 6 to 8 weeks old piglets by intramuscular inoculation. The challenge virus was a highly virulent pneumotropic, strain administred by the intranasal route.

Based on the foregoing, APHIS has determined that the general distribution and use of the recombinant derived modified live virus pseudorabies vaccine pursunt to a product license would have no significant impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council of Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 24th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–6850 Filed 3–28–88; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Klamath National Forest Environmental Impact Statement and Land and Resource Management Plan

In the matter of Klamath National Forest, Siskiyou County, California and Jackson County, Oregon; revised notice of intent to prepare an environmental impact statement.

SUMMARY: As a result of large wildfires in the fall of 1987, the Forest Service will revise the Environmental Impact Statement and Land and Resource Management Plan for the Klamath National Forest, Yreka, California. The agency invites written comments and suggestions on the scope of the analysis in addition to that already received as a result of previous public participation activities. In addition, the Forest Service will hold a public meeting at the U.S. Forest Service Building, 1312 Fairlane Road, Yreka, Ca. 96097, on April 25, 1988, at 7:00 pm.

The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by June 24, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Robert J. Anderson, Land Management Planning Officer, Klamath National Forest, Yreka California 96097; phone (916) 842–6131.

SUPPLEMENTARY INFORMATION: In revising the Environmental Impact Statement, the Forest Service will identify and consider a range of alternatives. One of these is no action. Other alternatives will consider various intensities for management of the Klamath National Forest. The Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process [40 CFR 1501.7]. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed plan. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the plan and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November, 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

It is very important that those interested in the Land and Resource Management Plan participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act as 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the plan so that it is meaningful and will alert an agency to the reviewers' position and contentions [Vermont Yankee Nuclear Power Corp.

v. NRDC, 435 U.S. 519 (1978)], and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement [Wisconsin Heritages, Inc. v. Harris, 490 F. Supp 1334 (E.D. Wis. 1980)]. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can consider them and respond to them in the final.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement and Land and Resource Management Plan. The Final EIS is scheduled to be completed by November 1990. In the Final EIS and Land and Resource Management Plan, the Forest Service is required to respond to the comments, responses, environmental consequences discussed in the DEIS and Plan, and applicable laws, regulations, and policies in making a decision regarding this Plan. The responsible offical will document the decision and reasons for the decision; in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Barbara Holder,

Deputy Forest Supervisor.

Date: March 18, 1988.

[FR Doc. 88-6791 Filed 3-28-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Soil, Water, and Related Resources

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Soil and Water Resources Conservation Act of 1977 (RCA), 16 U.S.C. 2001–2009, requires the Secretary of Agriculture to develop and periodically update a program for furthering the conservation, protection, and enhancement of soil, water, and related resources consistent with the roles and program responsibilities of the United States Department of Agriculture (USDA), and of other Federal agencies and State and local governments. The public review draft of "A National Program for Soil and Water Conservation: The 1988–97 Update" has been completed and is available for public review and comment.

DATES: The RCA public review period begins April 4, 1988 and will extend for 60 days. Comments should be submitted by June 4, 1988.

ADDRESS: Comments should be in written form and addressed to the appropriate State Conservationist, Soil Conservation Service, as set forth in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: The appropriate State Conservationist, shown below, or Peter M. Tidd, Acting Director, Strategic Planning and Policy Analysis Staff, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, telephone: (202) 447–8388.

SUPPLEMENTARY INFORMATION: Section 6 of the Soil and Water Resources Conservation Act of 1977 (RCA), 16 U.S.C. 2005, authorizes and directs the Secretary of Agriculture to develop, in cooperation with and participation by the public through conservation districts, State and national organizations and agencies, and other appropriate means, a national soil and water conservation program to assist landowners and land users in furthering soil and water conservation on the private and non-Federal lands of the Nation.

The draft program document, titled "A National Program for Soil and Water Conservation: The 1988–97 Update," sets forth the proposed direction for future soil and water efforts of the Department of Agriculture based on the current soil, water, and related resource appraisal developed in accordance with section 5 of the RCA, 16 U.S.C. 2004. See notice of appraisal availability in 52 FR 26168 (July 13, 1987). Both the long- and short-term needs of the Nation, including the landowners and the land users, are considered in the program in identifying the roles and responsibilities of Federal, State and local governments involved in conservation activities. The program sets forth natural resource conservation and environmental goals, objectives, priorities and program emphasis for the next 10 years. Program components include: focusing on critical problems; strengthening the Federal, State and local conservation partnership; and increasing program consistency and cost efficiency.

The USDA is asking for comments on any part of the proposed program, but would especially like public views on:

1. The National Conservation Program priorities.

2. The balance of Federal, State, local and private conservation responsibilities.

3. The programs and activities of the USDA as they relate to:

(a) Increasing assistance to small-scale, limited-resource, and minority farmers.

(b) Research and analysis on alternative farming systems.

(c) USDA benefits to soil and water conservation programs.

Although the national program does not propose or direct any specific Federal actions that would affect the human environment so as to require an analysis under section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), an environmental assessment was conducted by the Department of Agriculture in the development of the program. The environmental assessment is available from Peter M. Tidd, Acting Director, Strategic Planning and Policy Analysis Staff, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013.

Each State Conservationist of the Soil Conservation Service, in coordination with the State Food and Agricultural Council, is conducting the public review of the draft program document in each state. Copies of the program and further information can be obtained by contacting the appropriate State Conservationist at the following locations:

Ernest V. Todd, 665 Opelika Road, P.O. Box 311, Auburn, Alabama 36830

Burton L. Clifford, 201 East 9th Avenue, Suite 300, Anchorage, Alaska 99501–3687

Verne M. Bathurst, Suite 200, 201 East Indianola Avenue, Phoenix, Arizona 85012

Albert E. Sullivan, Room 5423, Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201

Eugene E. Andreuccetti, 2121–C Second Street, Suite 102, Davis, California 95616

Richard N. Duncan, 300 Ala Moana Boulevard, Room 4316, Honolulu, Hawaii 96850

Paul H. Calverley, 304 North 8th Street, Room 345, Boise, Idaho 83702

John J. Eckes, Springer Federal Building, 301 North Randolph Street, Champaign, Illinois 61820

Robert L. Eddleman, Corporate Square-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224

Sheldon G. Boone, Diamond Hill, Building A, 3rd Floor, 2490 West 26th Avenue, Denver, Colorado 80211

Philip H. Christensen, 16 Professional Park Road, Storrs, Connecticut 06268–1299

Douglas E. Hawkins, Treadway Towers, Suite 207, 9 East Loockerman Street, Dover, Delaware 19901–7377

James W. Mitchell, Federal Building, Room 248, 401 SE., 1st Avenue, Gainesville, Florida 32601
B. Clayton Graham, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601
Homer R. Hilner, Room 101, 1405 South Harrison Road, East Lansing, Michigan 48823–5202
Gary R. Nordstrom, 200 Federal Building and U.S Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101
Louise P. Heard, Federal Building, Suite 1321, 100 West Capitol Street, Jackson, Mississippi 39269
Russell C. Mills, 555 Vandiver Drive, Columbia, Missouri 65202
Michael Nethery, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309
James N. Habiger, 760 South Broadway, Salina, Kansas 67401
Randal W. Giessler, 333 Waller Avenue, Room 305, Lexington, Kentucky 40504
Horace J. Austin, 3737 Government Street, Alexandria, Louisiana 71302
Charles Whitmore, USDA Building, University of Maine, Orono, Maine 04473
Pearlie S. Reed, Harwick Building, Room 522, 4321 Hartwick Road, College Park, Maryland 20740
Rex O. Tracy, 451 West Street, Amherst, Massachusetts 01002
Bobby Jack Jones, Federal Office Building, Room 535, 310 New Bern Avenue, Raleigh, North Carolina 27601
Ronnie Clark, Federal Building, Rosser Avenue & Third Street, P.O. Box 1458, Bismarck, North Dakota 58502–1458
Joseph C. Branco, 200 North High Street, Room 522, Columbus, Ohio 43215
Glen Loomis, Federal Building, Room 443, 10 East Babcock Street, Bozeman, Montana 59715
Ronald E. Hendricks, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866
Charles R. Adams, 1201 Terminal Way, Room 219, Reno, Nevada 89502
David L. Mussulman, Federal Building, Durham, New Hampshire 03824
Carlos H. Henning (acting), 1370 Hamilton Street, Somerset, New Jersey 08873
Ray T. Margo, 517 Gold Avenue, SW., Room 3301, Albuquerque, New Mexico 87102–3157
Paul A. Todd, James Hanley Federal Building, Room 771, 100 South Clinton Street, Syracuse, New York 13260
Jerry S. Lee, 675 Estes Kefauver, FB–USCH, 801 Broadway, Nashville, Tennessee 37203
Billy W. Milliken, Federal Building, 200 4th Street, SW., Huron, South Dakota 57350–2475
Harry W. Oneth, W.R. Poage Federal Building, 101 S. Main Street, Temple, Texas 76501–7682
Bud Fountain, USDA Agricultural Office Bldg., Stillwater, Oklahoma 74074
Jack P. Kanalz, Federal Building, Room 1640, 1220 S.W. Third Avenue, Portland, Oregon 97204
James H. Olson, 228 Walnut Street, Federal Square Station, Room 820, Harrisburg, PA 17108–0985
Jeffrey Vonk, USDA–SCS, GPO Box 4868, San Juan, Puerto Rico 00936
Robert J. Klumpe, 46 Quaker Lane, West Warwick, RI 02893
Billy R. Abercrombie, 1835 Assembly Street, Rm 950, Strom Thurmond Federal Bldg., Columbia, South Carolina 29201
Francis T. Holt, P.O. 11350, Salt Lake City Utah 84147–0350
John C. Titchner, 69 Union Street, Winooski, Vermont 95404
George S. Norris, Federal Building, Room 9201, 400 North 8th Street, Richmond, Virginia 23240
Lynn A. Brown, West 920 Riverside Avenue, Room 360, Spokane, Washington 99201–1080
Rollin N. Shank, 75 High Street, Room 301, Morgantown, West Virginia 26505
Cliffton A. Maguire, 4601 Hammersley Road, Madison, Wisconsin 53711
Frank S. Dickson, Jr., Federal Office Building, 100 East "B" Street, Room 3124, Casper, Wyoming 82601

Wilson Scaling,

Chief.

[FR Doc. 88–6749 Filed 3–28–88; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 30–87]

Proposed Foreign-Trade Zone; Natrona County International Airport, Casper, WY; Amendment of Application

Notice is hereby given that the application submitted by the Natrona County International Airport Board of Trustees, requesting authority to establish a general-purpose foreign-trade zone at the Natrona County International Airport near Casper, Wyoming (52 FR 43780, November 16, 1987), has been amended to include two additional sites (485 acres) within the airport complex. One site, to be used for covered and open storage (10 acres), is located in the 7300 block of Morgan Street. The second site would cover 475 acres within the Industrial Air Cargo Park located along U.S. Highway Nos. 20 and 26 near Runway 3–21. The application remains otherwise unchanged.

The comment period is reopened until April 28, 1988.

The application and amendment material are available for public inspection at the following locations:

Casper Area Economic Development Alliance, Suite 615, 111 West Second Street, Casper, Wyoming 82601;
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

John J. Da Ponte, Jr.,

Executive Secretary.

Dated: March 22, 1988.

[FR Doc. 88–6830 Filed 3–28–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

University of California et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–232. Applicant: University of California, Berkeley, CA 94720. Instrument: Mass Spectrometer, Model VG ZABEQ with VG 11–250J Data System, Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice at 52 FR 30939, August 18, 1987. Reasons for this decision: The foreign instrument provides: (1) mass range to 10,000 amu at 8 kV accelerating potential, (2) resolution to 125,000, and (3) FAB capability. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87–236. Applicant: University of South Carolina, Columbia, SC 29208. Instrument: Gas Chromatograph Mass Spectrometer, Model VG–70–SQ with Model VG 11–250J Data System. Manufacturer: VG Instruments, United Kingdom. Intended use: See notice at 52 FR 30940, August 18, 1987. Reasons for this decision: The foreign instrument provides MS/MS analysis with mass range to 3000 and an alternating FAB probe. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87-237. Applicant: Hospital of the University of Pennsylvania, Philadelphia, PA 19104. Instrument: Cerebrograph for Measuring Blood Flow. Manufacturer: Scan-Delectronics, Denmark. Intended use: See notice at 52 FR 30940, August 18, 1987. Reasons for this decision: The foreign instrument provides non-invasive delivery of 133 xenon tracer and spatial resolution of 2.0 cm. Advice submitted by: National Institutes of Health, February 18, 1987.

Docket Number: 87-248. Applicant: Shriners Hospital for Crippled Children, Boston, MA 02114. Instrument: Mass Spectrometer, SIRA 10. Manufacturer: VG Isogas, United Kingdom. Intended use: See notice at 52 FR 37356, October 6, 1987. Reasons for this decision: The foreign instrument provides an internal precision of 0.015 ‰ for 10 microliter samples of CO_2 and interfaces to an automatic elemental analyzer and an automated combustible GC inlet. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87-249. Applicant: University of California, Santa Cruz, CA 95064. Instrument: Gas Chromatograph Mass Spectrometer/ Data System, Model MAT 90. Manufacturer: Finnigan MAT GmbH, West Germany. Intended Use: See notice at 52 FR 30941, August 18, 1987. Reasons for this decision: The foreign instrument provides: (1) Resolution to 50,000, (2) mass range to 17,500 amu, and (3) scan speeds to 0.1 second per decade. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87-258. Applicant: University of California, San Diego, La Jolla, CA 92093. Instrument: Photomicroscope III. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 52 FR 32824, August 31, 1987. Reasons for this decision: The foreign instrument provides multiple operating modes such as transmitted and incident light microscopy, fluorescence activation, flash and metered photometry, and polarizing microscopy. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87-279. Applicant: University of Washington, Seattle, WA 98195. Instrument: Emittance Monitor. Manufacturer: Danfysik A/S, Demark. Intended use: See notice at 52 FR 37356, October 6, 1987. Reasons for this decision: The foreign instrument provides a movable slit type detector with a combined slit step and angle resolution of 0.06 mm mrad. Advice submitted by: National Bureau of Standards, January 28, 1988.

Docket Number: 88-063. Applicant: Saint Louis University, St. Louis MO 63156. Instrument: Seismograph System, Model STS-IV/STS-IH. Manufacturer: G. Streckeisen AG, Switzerland. Intended use: See notice at 53 FR 1812, January 22, 1988. Reasons for this decision: The foreign instrument is capable of broad-band recording providing a resolution from 3 Hz to 0.3 mHz. Advice submitted by: The U.S. Geological Survey.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health, National Bureau of Standards and U.S. Geological Survey advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-6831 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Importers' and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers, and Retailers' Textile Advisory Committee will be held on Tuesday, April 19, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes, contact Alfreda Burton (202) 377-5761.

Dated: March 23, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-6815 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of Management-Labor Textile Advisory Committee will be held on Wednesday, April 20, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 10:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executiuve Session: 2:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes, contact Alfreda Burton, (202) 377-5761.

Dated: March 23, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-6816 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 71151-7251]

Research Grants Program Center for Manufacturing Engineering

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing research grants program of Center for Manufacturing Engineering.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Manufacturing Engineering, National Bureau of Standards, which conducts a program of basic and applied research in computer automated manufacturing, also administers a program of research grants in highly selected areas of research related to the mission of the Center. The mission of the Center for Manufacturing Engineering is to bring the resources of this laboratory to bear on the standards and measurements problems associated with America's discrete parts manufacturing. Funding available for grants is variable depending upon levels of external support for Center research. During fiscal year 1987 the Center awarded grants totaling approximately $1.9 million. The grant program is limited to unsolicited proposals and is highly competitive. Previous notices of this research grant program were published in the **Federal Register** on May 10, 1985 (46 FR 11331) and October 7, 1986 (46 FR 23079). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

DATE: *Closing Date for Applications:* Applications will be accepted until May 31, 1988.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 as referenced under the provisions of OMB Circular A-110 to: Office of the Director, Center for Manufacturing Engineering, National Bureau of Standards, Building 220, Room B-332, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Barbara Horner at (301) 975-3400.

SUPPLEMENTARY INFORMATION: As authorized by Section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 272), the NBS Center for Manufacturing Engineering conducts a program of basic and applied research in computer automated manufacturing. In fulfillment of its mission, the Center for Manufacturing Engineering conducts active programs of research in the areas of:

(a) High precision dimensional measurement.

(b) Sensing and measurement of force, sound, vibration, and surface finish characteristics.

(c) Application of advanced control and sensing techniques to automated machines, manufacturing systems, and robot manipulators.

During fiscal year 1987 approximately $1.9 million was made available for grants and cooperative research under this program. Grants made under this research program are awarded on the basis of unsolicited proposals that are in accord with the objectives and programs of the Center. Areas of active research include:

(a) Real-Time Control. Real-Time control of robots, clusters of robots and machine tools (workstations), material handling systems, supporting devices, and aggregations of workstations.

(b) Automated Systems Integration. Architectural issues for large computer automated systems, initialization, restart, orderly shutdown, error detection and recovery.

(c) Sensory Systems and Adaptive Control. Sensors and applications of sensors to closed-loop control of major systems.

(d) Factory Floor Communications. Development and testing of factory floor communications networks.

(e) Data Management. Development and testing of architectures for distributed data management on the factory floor.

(f) Robot Metrology. Characterization and measurement of errors in robot motion and development of techniques to accommodate those errors.

(9) Robot Vision and Sensory World Modeling. Study of models for processing and inference from vision and other complex source sensory systems.

(h) Machine Tool Metrology. Application of software and hardware techniques for improvement of machine tool accuracy and evaluation of machine tool performance.

(i) Automated Process Planning. Development of systematic approach to computer aided process planning leading to fully generative systems.

(j) Organization and Processing of Manufacturing Geometry Data. CAD-directed inspection, common domain data formats, integration of vision data, automated feature selection, automated generation of machining sequences from geometry.

(k) Expert Systems and Artificial Intelligence. Application to automated manufacturing systems.

(l) Software Engineering Tools Applied to Real-Time Control Systems. Development of tools for specification, design, testing, and verification of software for automated manufacturing.

(m) Quality Control Issues in an Automated Factory. Development of tools and procedures for measuring quality control during manufacturing operations.

(n) Scheduling in an Automated Factory. Development of algorithms and simulation/emulation techniques for planning factory scheduling.

The Center for Manufacturing Engineering Research Grant Program does not involve the payment of any matching funds from a state or local government and does not directly affect any state or local government. Accordingly, NBS has determined that Executive Order 12372 is not applicable to the Center for Manufacturing Engineering Research Grant Program.

This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Eligibility: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

Proposal Review Process

All proposals will be reviewed first for suitability of the topic to the mission of the Center. Proposals on topics outside the mission of the Center will be returned. Proposals on topics within the mission of the Center will be reviewed further in accordance with the following process and criteria:

(a) Uniqueness. (20 points) Proposals for research which builds upon or makes direct use of Center results or which addresses identifiable problems being investigated in the Center will receive favorable consideration over proposals for general research that could be supported by other grant programs, such as those of the National Science Foundation.

(b) Applicability. (20 points) Proposals for research which will be conducted at NBS or which will be implemented or tested in facilities of the Center will receive favorable consideration over research to be conducted apart from the Center. It is generally expected that senior workers on the project will find it appropriate to conduct a major portion of their effort on-site at NBS in Gaithersburg, Maryland.

(c) Technical Merit of Proposal. (30 points) Proposals should identify a clearly defined research problem, set forth a technically feasible line of attack, and demonstrate knowledge of the state-of-the-art. Ratings in this category will be based on these criteria.

(d) Technical Qualifications of Proposer. (30 points) Qualifications of the Principal Investigator and availability of suitable laboratory support will be reviewed under this criterion.

Each proposal reviewed will be considered by a panel consisting of professionals from NBS and experts from other government agencies, universities, or industries. The proposal, with evaluation, will be transmitted to the relevant Division Chief within the Center for Manufacturing Engineering for his or her consideration with respect to availability of funding.

Applicants should allow 60 days processing time.

Paperwork Reduction Act

The reporting requirements will be those contained in OMB Circular A-110. The Standard Form references in this notice is subject to the Paperwork Reduction Act and is cleared under OMB Control # 0348-0006.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements are made to pay the debt.

Dated: March 23, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-6735 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: The Maritime Center of Norwalk (P417)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: The Maritime Center of Norwalk, 112 Washington Street, South Norwalk, Connecticut 06854.

2. Type of Permit: Public display.

3. Name and Number of Marine Mammals: Harbor Seal (*Phoca vitulina*), 5.

4. Type of Take: The applicant is requesting authorization to maintain captive born or beached/stranded harbor seals.

5. Period of Activity: One year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: March 24, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-6825 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: North Gulf Oceanic Society (P351C)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Mr. Craig O. Matkin, Director, North Gulf Oceanic Society, P.O. Box 15244, Homer, Alaska 99603.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Killer whales (*Orcinus orca*), 350.

4. Type of Take: The applicant proposes to take killer whales by harassment, over a 3-year period, during long-term photo-identification studies in Prince William Sound, Alaska. The animals will be approached up to three (3) times. The studies will determine long-term population trends and parameters and the resulting information will be compared with data from other regions where killer whale populations are monitored.

5. Location of Activity: Prince William Sound, Alaska Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: March 23, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-6826 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Sea Life Park, Inc. (P10D)

On December 21, 1987, Notice was published in the **Federal Register** (52 FR 48315) that an application had been filed by Sea Life Park, Inc., Makapuu Point, Waimanalo, Honolulu, Hawaii 96795 to import four (4) Pacific false killer whales (*Pseudorca crassidens*) for public display.

Notice is hereby given that on March 23, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 301 South Ferry St., Terminal Island, California 90731.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: March 23, 1988.

[FR Doc. 88-6787 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Termination of Group Application; Civilian Employees of the U.S. Army and U.S. Navy Who Participated in the Defense of Bataan and Corregidor

Under the provisions of Section 401, Pub. L. 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has terminated the consideration of the application on behalf of the group known as: "Civilian Employees of the U.S. Army and U.S. Navy who Participated in the Defense of Bataan and Corregidor during the Period December 7, 1941 through May 6, 1942." Consideration of this group application was terminated by the board due to lack of sufficient evidence in the group application and the historical documentation on which to base a determination as to whether the service of the group was equivalent to "active duty" to the Armed Forces of the United States. The group application has been returned to the applicant.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-6785 Filed 3-28-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.094B]

Invitation for Applications From Consortium Arrangements for a New Award Under Part B of Title IX of the Patricia Roberts Harris Fellowships Program for Fiscal Year 1988

Purpose: Provides, under the Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships, a grant to a consortium of historically black colleges and doctoral degree-granting institutions of higher education to provide supplemental need-based financial aid to students and faculty from historically black colleges who are pursuing doctoral studies.

Deadline for Transmittal of Applications: May 13, 1988.

Applications Available: March 31, 1988.

Available Funds: $239,000.

Size of Award: $239,000.

Number of Awards: 1.

Project Period: 12 months.

Applicable Regulations: (a) The Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships Program, 34 CFR Part 649, and (b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78, as provided in 34 CFR 649.3.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732-4395 or Mrs. Barbara J. Harvey on (202) 732-4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue SW., Room 3022, ROB-3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134d-1134g.

Dated: March 23, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-6823 Filed 3-28-88; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education, Education.

ACTION: Notice of Emergency Telephone Conference Meeting of the National Advisory and Coordinating Council on Bilingual Education.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: March 29, 1988, 12:00 Noon.

The telephone conference meeting will be conducted at Reporters' Building, 300 7th Street SW., Room 421, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporters' Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202 (202) 732-5063.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

I Roll Call

II Vote on 12th Annual Report due to Congress on March 31, 1988.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room, 421, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.-5:30 p.m.

Dated: March 24, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88-6824 Filed 3-28-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-09-NG]

Bonus Gas Processors, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 11, 1988, of an application filed by Bonus Gas Processors, Inc. (Bonus), for blanket authorization to import up to 219 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery. Bonus would be acting as a marketer of natural gas for its own account as well as on behalf of U.S. purchasers and Canadian suppliers. Bonus intends to purchase natural gas primarily from its affiliate, Bonus Petroleum Corporation, but may depend as well on other Western Canadian suppliers, including Diamond Shamrock. The gas would be sold on a short-term or spot market basis to a wide range of purchasers in the U.S. including, but not limited to pipelines, local distribution companies, commercial and industrial end-users. Bonus intends to utilize existing facilities. Bonus also proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than April 28, 1988.

FOR FURTHER INFORMATION:

Allyson C. Reilly, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478;
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Bonus requests that its authorization be granted on an expedited basis. Section 590.205(a) of ERA administrative procedures generally requires a notice to extend a 30-day comment period except in emergency circumstances. Bonus has failed to identify any emergency circumstances that would justify expedited consideration. Therefore, a decision on the application will not be made until all responses to this notice have been received and evaluated.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., April 28, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Bonus' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 22, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–6810 Filed 3–28–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–69–NG]

Development Associates, Inc.; Order Extending Blanket Import Authorization and Increasing Volumes of Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket import authorization and increasing volumes of natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued to Development Associates, Inc. (DA), an order extending for two years its blanket authorization to import Canadian natural gas for sale in the

domestic spot market. The order issued in ERA Docket No. 87–69–NG increases the volume of gas DA is authorized to import from 20 Bcf to 30 Bcf and extends its existing authorization from March 30, 1988, to March 30, 1990.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independer ce Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 22, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–6811 Filed 3–28–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–70–NG]

Dynasty Gas Marketing, Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Dynasty Gas Marketing, Inc. (DGM), blanket authorization to import natural gas. The order issued in ERA Docket No. 87–70–NG authorizes DGM to import up to 73 Bcf of natural gas over two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 18, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–6812 Filed 3–28–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board, New Production Reactor Technology Assessment Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: New Production Reactor Technology Assessment Panel of the Energy Research Board (ERAB).

Date and Time: April 19, 1988—2:00 p.m.–5:00 p.m.

Place: Holiday Inn—Crowne Plaza, 5985 Century Boulevard, Los Angeles, CA 90045, (213) 642–7500.

Contact: Philip M. Stone, Executive Assistant, Office of Energy Research, Department of Energy, Washington, DC 20585, (202) 586–5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The New Production Reactor Technology Assessment Panel is a subgroup of ERAB and reports to the parent Board. The Panel will review and assess four reactor types as candidate technologies for the New Production Reactor (NPR): the Low Temperature Heavy Water Reactor; the Light Water Reactor; the High Temperature Gas-Cooled Reactor; and the Liquid Metal Reactor. Specifically, the Panel will review and assess the Department's proposed evaluation criteria for the NPR; assess the adequacy of each of the four candidate reactor technologies to meet the criteria; and assess schedule and technical risks, benefits, and costs in implementing a NPR program with each technology.

Tentative Agenda:

2:00 pm—Summary of Subpanel Activities: Low Temperature Heavy Water Reactor; Light Water Reactor; High Temperature Gas-Cooled Reactor; and Liquid Metal Reactor

4:50 pm—Public Comment (10 minute rule)

5:00 pm—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Philip Stone at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Ave., SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on March 22, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research

[FR Doc. 88–6813 Filed 3–28–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Hydroelectric Application Filed

March 25, 1988

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Surrender of License.

b. Project No.: 8324–005

c. Date Filed: February 2, 1988.

d. Applicant: Marshall Saunders and Dee Anthony.

e. Name of Project: M. D. Hydro Hydroelectric Project.

f. Location: On unnamed tributary to Sheridan Creek, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Marshall Saunders, P.O. Box 373, Shingletown, CA 96088, (916) 474–3230.

i. FERC Contact: Mr. Ahmad Mushtaq (202) 376–1900.

j. Comment Date: May 9, 1988.

k. Description of the Proposed Surrender: The project would have consisted of: (1) A 2-foot-high, 13-foot-long rock and concrete diversion dam at elevation 2,200 feet m.s.l.; (2) a 12-inch-diameter, 950-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 65 kW, operating under a head of 81 feet; (4) a 100-foot-long, 12.7-kV tap connecting the powerhouse with a Pacific Gas and Electric Company line at the project site; and (5) appurtenate facilities. The licensee states that they are experiencing serious problems on water rights and insufficiency of funds for the project.

l. This notice also consists of the following standard paragraphs: B, C and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received

on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, 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.

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 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6854 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-809-001]

Amalgamated Pipeline Co.; Application for Extension of a Blanket Limited-Term Certificate With Pregranted Abandonment

March 24, 1988.

Take notice that on March 22, 1988, Amalgamated Pipeline Company (Amalgamated), 1000 Louisiana Street, Suite 4900, Houston, Texas 77002, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for a three-year term and to grant such authorization on behalf of producer-suppliers selling to or through Amalgamated as agent, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6842 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-34-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 23, 1988.

Take notice that on March 18, 1988 ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission ("Commission") Second Substitute Fourth Revised Sheet No. 570 under Rate Schedule X-64 of Original Volume No. 2 of its FERC Gas Tariff, to become effective January 1, 1988.

ANR states that this filing has been made to: (1) Reflect a reduction in the depreciation rate effective January 1, 1987; (2) revise Grand Chenier's depreciation reserve at December 31, 1987 due to the application of a 6% depreciation rate effective January 1, 1987; and (3) apply a "Reverse South Georgia" adjustment to the tax base, all in accordance with the Commission's February 19, 1988 acceptance in the subject docket.

Any person desiring to be heard or to protect said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 30, 1988. 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 proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6834 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3009-000 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Company et al.; Applications for Abandonment of Service and To Amend Certificates [1]

March 24, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3009-000 D, Mar. 2, 1988	ARCO Oil and Gas Company, Divison of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	United Gas Pipe Line Company, Dulac Field, Terrbonne Parish, Louisiana.	(1)
G-3284-001, D, Mar. 1, 1988	...do...	Texas Eastern Transmission Corporation, North Hostetter Field, McMullen County, Texas.	(2)
G-12719-000, D, Mar. 11, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Colorado Interstate Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(3)
G-18303-005, D, Mar. 3, 1988.	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880,.	El Paso Natural Gas Company. Justis, et al Fields, Lea Company, New Mexico.	(4)
CI61-1425-007, D, Mar. 3, 1988.	...do...	Langlie-Mattix Field, Lee County New Mexico	(5)
CI61-1425-008, D, Mar. 3, 1988.	...do...	...do...	(6)
CI170-654-002, D, Feb. 4, 1988.	Sun Exploration and Production Company	Trancontinental Gas Pipe Line Corporation, Garica, et al Fields, Starr & Jim Hogg Counties, Texas.	(7)
CI88-348-000, (CI68-1204), D, Mar. 3, 1988.	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	K N Energy, Inc., E.L. Miller Unit, Texas County Oklahoma.	(8)
CI88-350-000 (CI79-281), B, Mar. 4, 1988.	Case-Pomeroy Oil Corporation, 12600 Northborough—Suite 155, Houston, TX 77067.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., South Marsh Island 257, Offshore Louisana.	(10)
CI88-352-000 (CI61-125), D, Mar. 4, 1988.	Texaco Producing Inc.	ANR Pipeline Company, Holly Ridge Field, Tensas Parish, Louisana.	(11)
CI88-353-000 (G-2584), D, Mar. 7, 1988.	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Wiliston Basin Interstate, Pipeline Company, Manderson Unit, Muddy Sand, Big Horn County, Wyoming.	(12)

Footnotes

[1] By Assignment dated 6-2-86, ARCO assigned its interest in certain acreage to Pennzoil Producing Company.

[2] ARCO has leased all its producing rights (working interests) in lease ATX-MD-833, which is included in the Stella Penn Operating Area, to Petrus Oil Company, Inc., effective 5-1-86.

[3] Farmout Agreement dated 10-1-84 of Sohio's working interest in the McGee Barby Unit, Sec. 2, T5N-R23ECM to Donald C. Slawson.

[4] Effective 1-2-86, Sun assigned its interest in Property No. 418137, Carlson A (partial interest); Property No. 418138, Carlson B; Property No. 703949, Stuart Langlie Mattix (partial interest), to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[5] Effective 1-2-86, Sun assigned its interest in Property No. 569458, Myers Langlie-Mattix, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[6] Effective 1-2-86, Sun assigned its interest in Property No. 418141, Carlson Federal; No. 456684, Farnsworth 4; No. 569458, Myers Langlie-Mattix (partial interest); and No. 588345, Eva Owens, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[7] Leases have expired.

[8] TPI assigned to Durango Energy Inc., all its rights to the E.L. Miller Unit, Sec. 5-T1N-R18ECM, Texas County, Oklahoma, effective 10-1-87

[9] Not used.

[10] Ceased production due to depletion.

[11] TPI assigned to John W. McGowan all its rights to certain leases in the Holly Ridge Field, Tensas Parish, Louisana, effective 12-1-86.

[12] Effective 12-31-86, Mobil assigned certain productive acreage to Natural Gas Processing Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-6835 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-103-007]

Panhandle Eastern Pipe Line Co.; Notice of Compliance Filing

March 23, 1988.

Take notice that on March 15, 1988 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing certain revised tariff sheets.

Panhandle states that these revised tariff sheets to be effective March 1, 1988 reflects the changes required by the Commission's Letter Order dated March 2, 1988. Also, Panhandle submits herewith First Substitute Sixty-Third Revised Sheet No. 3-A and First Substitute Fortieth Revised Sheet No. 3-B, which reflect the base tariff rates establishes herein as adjusted by the PGA filing permitted to become effective March 1, 1988 pursuant to the Commission's Order dated February 26, 1988 in Docket No. TA88-3-28-000.

Panhandle states that this filing reflects the requirements of the Commission's Letter Order dated March 2, 1988 in Docket No. RP87-103-005, the Commission's Orders dated September 30, 1987 and December 31, 1987 in Docket Nos. RP87-103-000 and RP87-103-004, respectively, and the Commission's Order dated November 16, 1987 in Docket No. RP87-95-002, and is without prejudice to Panhandle's rights on rehearing or in any judicial review proceeding or its position in this proceeding.

Copies of this letter and enclosures are being served on all jurisdiction customers, interested state commissions and all parties to this proceeding.

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 March 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6836 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-299-000]

Southern Natural Gas Company.; Notice of Application

March 24, 1988.

Take notice that on March 15, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP88-299-000 an application pursuant to section 7(b) of the Natural Gas Act as amended, for permission and approval to abandon a portion of the contract demand allocated to the City of Vicksburg, Mississippi (Vicksburg), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern stated that it provides service to Vicksburg pursuant to a service agreement dated October 23, 1987, for the sale and purchase of natural gas in quantities of up to 15,000 Mcf per day. It is stated that the agreement superceded a service agreement dated Auguat 28, 1967, which expired by its own terms on November 1, 1987. The Exhibit A to the 1967 service agreement stated that Southern would provide Vicksburg with a contract demand of 18,000 Mcf per day, it is asserted. Since Southern is obligated to serve Vicksburg with less contract demand under the new agreement, Southern requests authority to abandon the 3,000 Mcf per day of firm sales service relinquished by Vicksburg.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashwell,

Acting Secretary.

[FR Doc. 88-6837 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-424-007 et al. and ER 86-506-004 et al.]

Southwestern Electric Power Co.; Filing

March 24, 1988.

Take notice that on March 21, 1988, Southwestern Electric Power Company tendered for filing pursuant to the Commission's letter order of January 21, 1988, as modified on March 4, 1988, in these consolidated proceedings, Southwestern Electric Power Company (SWEPCO) submitted a compliance refund report. As required by the Commission, the report contained a table showing, by customer, monthly billing determinants, revenue receipt dates, revenues under rates reflecting the filed returns on common equity, revenues under rates reflecting the settlement returns on common equity, the monthly refunds due and the interest calculated thereon.

Copies of the filing were served on the affected wholesale customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1988. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6838 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-29-004]

Tarpon Transmission Co.; Compliance Filing

March 23, 1988.

Take notice that on March 17, 1988, Tarpon Transmission Company ("Tarpon") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1987:

Revised Alternate Substitute Original Sheet No. 33
Revised Substitute Original Sheet No. 34
Original Sheet No. 34A
Revised Substitute Original Sheet No. 35
Alternate Revised Substitute Original Sheet No. 35[1]
Revised Substitute Original Sheet No. 36
Revised Substitute Original Sheet No. 37
Revised Alternate Substitute Original Sheet No. 38
Substitute Original Sheet No. 39
Revised Alternate Substitute Original Sheet No. 40
Revised Alternate Substitute Original Sheet No. 48
Revised Substitute Original Sheet No. 49
Revised Substitute Original Sheet No. 50
Alternate Revised Substitute Original Sheet No. 50[1]
Revised Substitute Original Sheet No. 52
Revised Alternate Substitute Original Sheet No. 53
Substitute Original Sheet No. 54
Revised Alternate Substitute Original Sheet No. 55
Revised Alternate Substitute Original Sheet No. 80
Revised Alternate Original Sheet No. 81
Revised Alternate Substitute Original Sheet No. 89

Tarpon states that it has filed these revised tariff sheets in compliance with the Commission's "Order Partially Granting Request for Rehearing and Accepting Compliance Filing Subject to Conditions," issued on March 2, 1988, in the above-captioned dockets. These tariff sheets relate to the implementation by Tarpon of transportation service pursuant to section 311 of the Natural

[1] Tarpon has requested that the Commission make Alternate Revised Substitute Original Sheet Nos. 35 and 50 effective in lieu of Revised Substitute Original Sheet Nos. 35 and 50. *See* "Request of Tarpon Transmission Company for Rehearing," filed in Docket Nos. RP88-29-000, *et al.* on March 17, 1988.

Gas Policy Act and Part 284 of the Commission's regulations. Tarpon requests the Commission to waive all applicable regulations in order to permit these revised tariff sheets to become effective on December 1, 1987.

Tarpon also tendered for filing on March 17, 1988, Second Revised Sheet No. 19 to its FERC Gas Tariff, Original Volume No. 1. Tarpon states that it filed this revised tariff sheet to incorporate the terms of Amendment No. 4 to the Transportation Agreement dated February 15, 1977, between Tarpon and Trunkline Gas Company. Amendment No. 4 describes the procedure for assessing and billing Tarpon's charges for Part 284 transportation services. A copy of Amendment No. 4 is included in Tarpon's filing. Tarpon requests that the Commission waive all applicable regulations in order to permit Second Revised Sheet No. 19 to be effective on March 17, 1988, the date of filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such motions or protests should be filed on or before March 30, 1988. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6839 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-8-006]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

March 23, 1988.

Take Notice that on March 16, 1988, United Gas Pipe Line Company ("United") tendered for filing, pursuant to section 311 of the Natural Gas Policy Act of 1978 and section 4 of the Natural Gas Act, the following revised tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 with a proposed effective date of November 1, 1987.

Rate Schedule FTS

Substitute Revised Substitute First Revised Sheet No. 48-C9
Substitute First Revised Sheet No. 48-C11
Substitute First Revised Sheet No. 48-C12
Substitute Original Sheet No. 48-C15

Rate Schedule ITS

Revised Substitute Original Sheet No. 48-E12

Transportation General Terms and Conditions

Substitute First Revised Sheet No. 74-Y2
Substitute First Revised sheet No. 74-Y4

United States that these tariff sheets, consisting of revised tariff sheets in Rate Schedules FTS and ITS and the Transportation General Terms and Conditions, are intended to comply with the Commission's March 1, 1988 "Order Granting in Part and Denying in Part Rehearing" in Docket No. RP88-8, et.al. and the Director, Office of Pipeline and Producer Regulation, letter order dated February 19, 1988 in Docket No. RP88-8-004.

Any person desiring to be heard or to protest with said filing should file a motion to intervene or protest with the Secretary, 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). Such motions or protests should be filed on or before March 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6840 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-79-000]

Valley Gas Transmission, Inc.; Request For Waiver of Certain Purchased Gas Adjustment Filing Requirements

March 24, 1988.

Take notice that on March 18, 1988, Valley Gas Transmission, Inc. (Valley) requested waiver of certain Purchased Gas Adjustment (PGA) filing requirements set forth in the regulations of the Federal Energy Regulatory Commission (FERC). Specifically, Valley seeks waiver of (1) the requirement that its PGA filings be made on 9-track magnetic computer tape as set forth at FERC Form 542-PGA (Revised); (2) the requirement that Schedule B2 of FERC From 542-PGA (Revised) be reported in MMBtus rather than in Mcfs; (3) the requirement that Valley file an Annual Assessment of Past Performance report as set forth at 18 CFR 154.306; and (4) the requirement that Valley make a June 1, 1988 transition filing and an August 1, 1988 quarterly filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6843 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-115-004]

Williston Basin Interstate Pipeline Co.; Filing

March 24, 1988.

Take notice that on March 17, 1988, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to effect revised pagination and for service commencement dates from those reflected in its February 29, 1988 filing:

First Revised Volume No. 1

Eighth Revised Sheet No. 10

Original Volume No. 1-A

Fifth Revised Sheet No. 11
Eighth Revised Sheet No. 12

Original Volume No. 2

Tenth Revised Sheet No. 10
Fourth Revised Sheet No. 11B
Substitute First Revised Sheet Nos. 80 and 90

Williston Basin requests that these tariff sheets be substituted for the corresponding sheets included in the

February 29, 1998, filing so that they may become effective March 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 385.211 (1987)). All such motions or protests should be filed on or before March 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6841 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of November 20 Through November 27, 1987

During the Week of November 20 through November 27, 1987, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedureal regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 22, 1988.

George B. Breznay,

Director, Office of Hearing and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 20 through 27, 1987]

Date	Name and location of applicant	Case No.	Type of Submission
Nov. 23, 1987	Cowles Publishing Co. Spokane, WA	KFA-0145	Appeal of an Information Request Denial. If granted: The Oct. 10, 1987, Freedom of Information Request Denial issued by Richland Operations Office would be rescinded and Cowles Publishing Co. would receive access to report, HW173881 dated Dec. 2, 1949, on the experimental "Green Run."
Do	....do	KFA-0144	Appeal of an Information Request Denial. If granted: The Nov. 3, 1987, Freedom of Information Request Denial issued by Richland Operations Office would be rescinded and Cowles Publishing Company would receive access to information regarding thyroid counts of two children taken on October 19, 1963.
Do	Mid-America Dairyman, Inc., Kansas City, MO	RR272-5	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The Oct. 28, 1987, Decision and Order issued to Mid-America Dairyman, Inc. (Case No. RF272-443) would be rescinded, regarding the firm's application for refund in the Crude Oil Refund Proceeding.
Do	The Seattle Times, Seattle, WA	KFA-0143	Appeal of an Information Request Denial. If granted: The Oct. 23, 1987, Freedom of Information Request Denial issued by Bonneville Power Administration (BPA) would be rescinded and the Seattle Times would receive access to complete copies of the last two DOE Procurement Management Assistance Reviews (PMAR) of BPA Procurement Activities.
Nov. 24, 1987	The National Security Archive, Washington, DC	KFA-0146	Appeal of an Information Request Denial. If granted: The Oct. 22, 1987, Freedom of Information Request Denial issued by the Oak Ridge Office of Scientific and Technical Information would be rescinded and the National Security Archive would receive access to certain Oak Ridge Operations Information.
Do	Williams and Connolly, Washington, DC	KFA-0147	Appeal of an Information Request Denial. If granted: The Oct. 23, 1987, Freedom of Information Request Denial issued by the Office of Field Operations, Dallas Regional Office would be rescinded and Williams and Connolly would receive access to a copy of a draft report dated June 30, 1980.

Date received	Name of refund proceeding/name of refund applicant	Case No.
3/11/86	Ashby Oil Company	RF225-10921
3/11/86	B.P. Newman Oil Co., Ltd.	RF225-10926
3/11/86	.....do	RF225-10927
4/17/86	Carrier Mills Oil Company.	RF225-10920
6/16/86	Olear's Inc	RF225-10922
7/21/86	Miller Oil Company	RF225-10923
8/28/86	Gray's Automotive	RF225-10919
11/6/86	Astroline Corporation	RF265-2588
5/12/87	Herb Brown's Friendly Service.	RF225-10924
5/12/87	.....do	RF225-10925
6/29/87	Hy-Grade Oil Company	RF265-2589
6/29/87	.....do	RF265-2590
11/20/87 thru 11/27/87.	Crude Oil Refund, applications received.	RF272-10954 thru RF272-11986
11/20/87 thru 11/27/87.	Gulf Oil Refund, applications received.	RF300-3867 thru RF300-4032
11/23/87	Amoco I/Iowa	RQ251-408
11/23/87	Vickers/Iowa	RQ1-409

Date received	Name of refund proceeding/name of refund applicant	Case No
11/23/87	Permian Petroleum Company.	RF299-43
11/24/87	OKC Corp./Arkansas.	RQ13-415
11/24/87	Shamrock Wholesale	RF253-42
11/24/87	Eastern Rulane Sales Corp.	RF299-44
11/24/87	Mondenhall Oil Company.	RF253-99
11/24/87	Gruver Oil & Gas Company.	RF253-40
11/25/87	Central Soya	RF270-2500
11/27/87	Mike Junker	RF265-2584
11/27/87	Steele Rulane Service, Inc.	RF299-45

[FR Doc. 88-6782 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of November 28 Through December 4, 1987

During the Week of November 28 through December 4, 1987, the appeal and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Nov. 28 through Dec. 4, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Nov. 30, 1987	Hanford Education Action League, Spokane, WA	KFA-0148	Appeal of an Information Request Denial. If Granted: The Nov. 16, 1987, Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded and the Hanford Education Action League would receive access to documents pertaining to the proposed acquisition of the Washington Nuclear Project Number 1 plant.
Dec. 4, 1987	The Southland Corp., Washington, DC	RR270-28	Request for Modification/Rescission. If Granted: The Sept. 25, 1987, determination issued to Southland Corp. (Case No. RF270-2174) would be rescinded regarding the firm's application for refund as a surface transporter in the stripper well litigation proceeding.

Date received	Name of refund proceeding/ name of refund applicant	Case No.
2/19/86	Steam Sales & Service Co.	RF225-10928
6/24/87	Rees Oil Co., Inc.	RF265-2586
11/6/87	Hite Oil Co	RF265-2585
11/28/87 thru 12/4/87.	Crude Oil Refund Applications Received.	RF272-11986 thru RF272-12880
11/28/87 thru 12/4/87.	Gulf Oil Refund Applications Received.	RF300-4033 thru RF300-4130
11/30/87	Terminal Freight Handling Co.	RF225-10928
11/30/87	Joseph A. Pelli	RF276-296
11/30/87	Yankee Bottle Gas Service.	RF299-46
12/1/87	Summit Gas & Appliance Co.	RF299-47
12/2/87	Fletcher Oil Co	RF301-2
12/3/87	Blanchard Fuel	RF299-48
12/3/87	Carl Johnson	RF225-10929
12/3/87	Raymond Pare	RF265-2587
12/3/87	Melton Truck Lines, Inc.	RF270-2501
12/3/87	Groendyke Transport, Inc.	RF270-2502
12/3/87	S.R.T. Motor Freight, Inc	RF270-2503
12/3/87	Schilli Motor Lines, Inc	RF270-2504
12/3/87	Evans Transportation Co.	RF270-2505
12/3/87	Scott Truck Line, Inc.	RF270-2506
12/3/87	Jenkins Truck Line, Inc.	RF270-2507
12/3/87	Greenleaf Motor Express, Inc.	RF270-2508
12/3/87	Wooten Transports, Inc	RF270-2509
12/3/87	Selland Auto Transport, Inc.	RF270-2510
12/3/87	Smith's Bakery, Inc.	RF270-2511
12/3/87	Garden State Taxi Co. Inc.	RF270-2512
12/4/87	Colonial Metals Co.	RF299-49
12/4/87	The Southland Corp.	RF270-28

[FR Doc. 88-6784 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of December 11 Through December 18, 1987

During the Week of December 11 through December 18, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals

List of Cases Received by the Office of Hearings and Appeals

[Week of Dec. 11 through 18, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 30, 1987	J.D. Streett & Co., Inc., Washington, DC	KRR-0038	Request for Modification/Rescission. If granted: The Aug. 14, 1987, Decision and Order issued to J.D. Streett & Co., Inc. (Streett) in Case No. KRX-0040 would be modified and the ERA would be required to alter its treatment of Streett's gasoline sales when it revises the Proposed Remedial Order issued to Streett.
Dec. 18, 1987	National Helium/Washington, Olympia, WA	RM3-95	Request for Modification/Rescission. If granted: The Jan. 13, 1987, Decision and Order (Case No. RQ3-234) issued to the State of Washington would be modified regarding the State's application for refund in the National Helium refund proceeding.
Dec. 15, 1987	Carl Sperling, Woodland Hills, CA	KFA-0152	Appeal of an Information Request Denial. If granted: The Nov. 30, 1987, Freedom of Information Request Denial issued by the Office of FOI and Privacy Acts would be rescinded and Carl Sperling would receive access to information regarding his wife, Muriel Sperling.
Dec. 16, 1987	Oklahoma, Oklahoma City, OK	KEG-0025	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

Refund Applications Received

[Week of Dec. 11 to 18, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
09/09/87	Colorado	RQ251-417
12/11/87 thru 12/18/87	Crude Oil Refund Applications Received.	RF272-15527 thru RF272-18427
12/11/87 thru 12/18/87	Gulf Oil Refund Applications Received.	RF300-4319 thru RF300-4424
12/15/87	Dairymen	RF270-2513
12/18/87	Superior Gas and Chemical.	RF273-6
12/16/87	Anderson Clayton Foods.	RD272-00390
12/16/87	Campbell Soup Co	RD272-00499
12/16/87	Oscar Mayer Foods Corp.	RD272-00500
12/16/87	American Crystal Sugar Co.	RD272-00502
12/16/87	Hibbing-Taconite Mining Co.	RD272-02233
12/16/87	Riceland Foods, Inc	RD272-02325
12/16/87	Coca-Cola Foods Co	RF272-03748
12/16/87	Tilcon Delaware, Inc	RF272-03976
12/16/87	Allied Bendix Aerospace.	RF272-04750
12/16/87	Bates Fabrics, Inc	RD272-04836
12/16/87	American Redball Transit Co.	RD272-04842
12/18/87	The 3M Corporation	RD272-05110
12/16/87	Gilman Realty Corp	RD272-05317
12/16/87	Cessford Construction Corp.	RD272-05427
12/16/87	Great Lakes Carbon Corp.	RD272-05971
12/16/87	Shupe Bros. Co	RD272-05984
12/16/87	Emerson Electric	RD272-05989

Refund Applications Received—Continued

[Week of Dec. 11 to 18, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/16/87	White Star Trucking, Inc.	RD272-06115
12/16/87	Lakeside Industries	RD272-06120
12/16/87	The Balf Co	RD272-06685
12/16/87	Granite Construction Co	RD272-06686
12/16/87	Western Contracting Corp.	RD272-07133
12/16/87	Rosebud Coal Sales Co.	RD272-7403
12/16/87	Black Butte Coal Co	RD272-7404
12/16/87	Decker Coal Co	RD272-7405
12/16/87	Interstate Coal Co, Inc	RD272-7412
12/16/87	Trade and Transport, Inc.	RD272-7644
12/16/87	Washington Irrigation & Devel.	RD272-7645
12/16/87	North Shore Towers	RD272-7654
12/16/87	Reeves Brothers, Inc	RD272-7714
12/16/87	Olin Chemicals	RD272-7748
12/16/87	The Boeing Co	RD272-7937
12/16/87	Cranston Print Works Co.	RD272-7980
12/16/87	Warrensburg Bd. & Paper Corp.	RD272-8003
12/16/87	British Airways, Plc	RD272-8082
12/16/87	Cook Motor Lines, Inc	RD272-07133
12/16/87	Ritchie Corp	RD272-07225
12/16/87	Gabor Trucking, Inc	RD272-07289
12/16/87	Lancaster Stone Products.	RD272-07349
12/16/87	Rinker Materials Corp	RD272-07409
12/16/87	Lane Construction Corp	RD272-07583

Refund Applications Received—Continued

[Week of Dec. 11 to 18, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/16/87	W.C. McQuide, Inc	RD272-07696
12/16/87	H.B. Zachry Co	RD272-07228
12/16/87	Crouse-Hinds Electrical	RD272-05111
12/16/87	Central Soya	RD272-00115
12/16/87	Winn-Dixie Stores, Inc	RD272-00197
12/16/87	Globe Transport & Trading Co.	RD272-0273
12/16/87	Mid-America Dairymen, Inc.	RD272-00443
12/16/87	MacAndrews Forbes Co	RD272-00556
12/16/87	American Home Products Corp.	RD272-00656
12/16/87	Hoffman-LaRoche, Inc	RD272-01038
12/16/87	R.J. Reynolds Tobacco Co.	RD272-02603
12/16/87	Jeddo-Highland Coal Co.	RD272-04104
12/16/87	Jefferson Smurfit Corp	RD272-04309
12/16/87	Almi Maritime Agency, Inc.	RD272-04528
12/16/87	J.P. Stevens & Co Inc	RD272-04531
12/16/87	Esleeck Manufacturing Co,.	RD272-4760
12/15/87	A/S Ivarans Rederi	RD272-5328
12/16/87	Bradford Dyeing Association.	RD272-5346
12/16/87	Inland Container Corp	RD272-5988
12/16/87	Schwan's Sales Enterprises, Inc.	RD272-06111
12/16/87	Willamette Industries, Inc.	RD272-06112
12/16/87	The Hemmerdinger Corp.	RD272-06133
12/16/87	The Bank Line Limited	RD272-06226
12/16/87	Linee Aeree Italiane, SPA.	RD272-06228

REFUND APPLICATIONS RECEIVED—Continued

[Week of Dec. 11 to 18, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/16/87	Olympic Airways S.A	RD272-06229
12/16/87	Chesapeake Paperboard Co.	RD272-06301
12/16/87	International Paper Co	RD272-06446
12/16/87	Fieldcrest Cannon, Inc	RD272-06463
12/16/87	The Magee Carpet Co	RF272-06676
12/16/87	American Jet Aviation	RF272-06847
12/16/87	A/S Bulkhandling	RD272-6996
12/16/87	C.H. Dexter Corp	RD272-7119
12/16/87	Sun State Marine, Inc	RD272-7141
12/16/87	MacMillan Bloedel, Inc	RD272-7154
12/16/87	Pakistan Intern'l Airline	RD272-7213
12/16/87	British Caledonian Airways.	RD272-7357
12/16/87	El Al Israel Airlines, Ltd	RD272-7358
12/16/87	Big Horn Coal Co	RD272-7401
12/16/87	Merck & Co, Inc	RD272-05316
12/16/87	The Coastal Corp	RF299-52
03/24/87	Look Oil Co, Inc	RF40-3704
05/05/86	J.J. Wright Oldsmobile, Inc.	RF225-10930
12/09/87	Pilot Oil Corp	RF40-2743
12/11/87	Consolidated Rail Corp	RF299-51
11/30/87	Mont La Salle Vineyards.	RF238-84
10/26/87	Padgetts Gulf Service	RF300-2827
10/26/87	Town of Bloomfield	RF300-2828
10/26/87	Keith Speer	RF300-2829
10/26/87	R.O. Turner	RF300-2830
10/26/87	Bill Gandy	RF300-2831
10/26/87	Riggs Garage	RF300-2832
10/26/87	Natali's Gulf Service	RF300-2833
10/26/87	Joseph Genetin	RF300-2834
10/26/87	Shaffer Oil Co	RF300-2835
10/26/87	Bells Mills Trading Post	RF300-2836
10/26/87	Southwestern Electric Power Co.	RF300-2837
10/26/87	Southend Gulf Service	RF300-2838
10/26/87	Horne Bros.	RF300-2839
10/26/87	George W. Keller Gulf Service.	RF300-2840
10/26/87	Gene Sullivan	RF300-2841
10/26/87	Winn-Dixie Raleigh, Inc	RF300-2842

[FR Doc. 88-6783 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ECAO-R-140; FRL-3356-1]

Acid Aerosols Issue Paper

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: At a time to be announced in a subsequent **Federal Register** notice, the Clean Air Scientific Advisory Committee (CASAC) will consider a draft report entitled "Acid Aerosols Issue Paper" (EPA/600/8-88/005A). A thirty-day public comment period will also be announced when the date of the CASAC meeting is set. In advance of the meeting, EPA is making available the draft report.

ADDRESS: Copies of the draft may be obtained by writing or calling the Office of Research and Development Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569-7562. Please provide your name, mailing address, the title of the draft, Acid Aerosols Issue Paper, and the draft's report number, EPA/600/8-88/005A.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Kotchmar, U.S. Environmental Protection Agency, MD-52, Research Triangle Park, NC 27711, (919) 541-4158, (FTS) 629-4158.

SUPPLEMENTARY INFORMATION: The Clean Air Act, 42 U.S.C. 7401 et seq., requires the U.S. Environmental Protection Agency to periodically review criteria for National Ambient Air Quality Standards (NAAQS) and NAAQS themselves and revise such criteria and standards as appropriate. This process led to: (1) the 1982 publication of the EPA document Air Quality Criteria for Particulate Matter and Sulfur Oxides (EPA/600/8-82/029F) and an addendum bound in with volume I of that criteria document addressing further information on health effects (EPA/600/8-82/029F, volume I); and (2) the 1986 publication of a second addendum to the criteria document which updated the earlier document by evaluating new studies and their implications for determination of health-related criteria for the PM and SO_2 NAAQS (EPA/600/8-82/020F). In this process of reviewing new scientific studies concerning PM and SO_x health effects, it became apparent that the researchers had identified acid aerosols as one type of constituent of the PM/SO_x aerometric mix that may be associated with observed PM/SO_x health effects. In December, 1985, the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board recommended that an issue paper be prepared to evaluate newly emerging literature concerning health effects directly associated with acid aerosols and to address the issue of possible listing of acid aerosols as a separate criteria pollutant for potential regulation by means of National Ambient Air Quality Standards (NAAQS).

A peer-review workshop on the draft issue paper was held in June, 1987. Since then the draft has been revised based upon the comments from the workshop and updated with other newly available material.

Date: March 16, 1988.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88-6804 Filed 3-28-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00258; FRL-3356-3]

Biotechnology Science Advisory Committee; Partially Closed Meeting of Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of a subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) to review an application submitted pursuant to section 5 of FIFRA by Crop Genetics International for an experimental use permit (EUP) for a genetically engineered microbial pesticide. The meeting will be closed to the public from 9 to 11:00 a.m. and open to the public from 11:00 a.m. to 4 p.m.

DATE: Monday, April 18, 1988.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Acting Executive Secretary, Biotechnology Science Advisory Committee, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703-557-7695)

SUPPLEMENTARY INFORMATION:

I. Notification of Meeting

The Federal Advisory Committee Act (FACA) (5 U.S.C. App. I (1982)) requires that timely notice of each meeting of an advisory committee be published in the **Federal Register**. The interim regulations of the General Services Administration (GSA) (41 CFR Parts 101 through 106) implementing FACA generally require 15 days notice of the meeting. The subcommittee is to meet in order to review an application submitted pursuant to section 5 of FIFRA by Crop Genetics International for an EUP for a genetically engineered microbial pesticide. This application proposes small scale field testing in Maryland of *Clavibacter xyli cynodontis* (Cxc) genetically engineered to contain the insecticidal delta endotoxin gene from *Bacillus thuringiensis* var. *kursaki*. The parental strain or Cxc (Crop Genetics isolate number MD69a) was isolated from Bermuda grass in Westover, Maryland. The purpose of the EUP is to assess the efficacy of the product on the European corn borer, and to obtain further knowledge of the behavior of this microorganism in the environment. This microbial pesticide is unique because it actually lives within the treated crop plants.

II. Reasons For Closed Meeting

Section 10(d) of FACA provides that an advisory committee meeting may be closed to the public "in accordance with subsection (c) of section 552b of Title 5, United States Code." Subsection (c)(4) of 5 U.S.C. 552b provides that an advisory committee meeting may be close to the public when it is determined that material to be considered at the meeting consists of trade secrets and commercial or financial information obtained from a person and privilege or confidential (hereafter "CBI"). Crop Genetics has claimed that its application contains"trade secret" or otherwise confidential information. We have reviewed the Crop Genetic's application and determined that the submission does contain information that is CBI. Therefore, insofar as the subcommittee will review CBI in the April 18, 1988 meeting, provision must be made for a portion of the meeting of the subcommittee to be conducted in executive session. A written determination that the meeting shall be close from 9 to 11 a.m. was made by the Administrator on March 15, 1988, pursuant to section 10(d) of FACA for the following reasons:

1. The Crop Genetics International submission contains CBI.

2. Making the submission public would disclose information that could do substantial harm to Crop Genetics International's competitive position.

3. Crop Genetics' product is at an early stage of development, i.e., 1 to 3 years before the company would normally request a registration from EPA. Thus, Crop Genetics is anxious to protect its product for as long as possible, in order to prevent competitors from unfairly bnefitting from its research and development efforts.

The Agency intends to make a verbatim transcript of the subcommittee meeting, which will be available to the public from the portion of the open meeting. If, upon review of that portion of the transcript from the executive session, EPA should determine that any portions of the transcript do not contain exempt material, EPA will make those portions of the transcript also available to the public.

The agenda for this meeting is:

1. Review of an application by Crop Genetics International for an EUP for a genetically engineered microbial pesticide.

2. Consideration of EPA's scientific assessment and issues in response to the EUP.

Copies of documents pertaining to the above agenda items may be obtained by contacting:

By mail: Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA., 703–557–2805.

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or phone listed under **FOR FURTHER INFORMATION CONTACT.** Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Acting Executive Secretary, present oral statements to the subcommittee. There is no limit on written comments for consideration by the subcommittee, but oral statements before the subcommittee are limited to approximately 5 minutes. Persons wishing to make oral and/or written statements should notify the Acting Executive Secretary and submit 10 copies of written comments and oral written testimony no later than April 6, 1988, in order to ensure appropriate consideration by the subcommittee. Information submitted in any comment concerning this notice may be claimed confidential by marking any part of that information as "Confidential Business Information." Information so marked will not be discolsed except in accordance with procedures set forth in 40 CFR Part 2. Those comments which do not contain CBI will be included in the public record. Comments submitted not marked CBI may be disclosed publicly by EPA without prior notice to the submitter.

Dated: March 23, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–6797 Filed 3–28–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–00089; FRL–3355–7]

Asbestos-Containing Materials in Schools; Laboratory Quality Assurance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of deadline for enrollment of new laboratories in second round of EPA interim asbestos bulk sample analysis quality assurance program.

SUMMARY: EPA will conduct the second round of the "Interim Asbestos Bulk Sample Anaylsis Quality Assurance Program" in April 1988. The deadline for enrollment of new laboratories in the program is April 12, 1988. Laboratories currently not participating in the interim EPA program but who wish to be included in the laboratory listing of accredited laboratories and plan to perform analyses of bulk samples for schools must apply to the following address: Research Triangle Institute, Box 12194, Research Triangle Park, North Carolina 27709, Attention: Steve Westbrook. Letters of application will be accepted from new laboratories for the April 1988 round of samples until April 12, 1988. Letters, received after April 12, 1988, will not be accepted.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 3, 1987 (52 FR 33470), the EPA announced the establishment of the "Interim Asbestos Bulk Sample Analysis Quality Assurance Program." At that time, EPA stated that a second round of the program would be offered in April

1988. Laboratories which intend to conduct analyses of bulk samples of asbestos-containing materials for schools must first be accredited under the interim EPA program, and subsequently under the National Bureau of Standards (NBS) National Voluntary Laboratory Accreditation Program (NVLAP).

II. Enrollment in EPA's Second Round

All laboratories which participated in the November 1987 round are automatically enrolled in the second round. Additionally, any laboratories which have requested enrollment in the April 1988 round by contacting Research Triangle Institute in writing will be included in the second round. Interested laboratories which have not yet enrolled in the program must notify Research Triangle Institute by April 12, 1988. Letters must be directed to Steve Westbrook, Research Triangle Institute, P.O. Box 12194, Research Triangle Park, NC 27709.

III. Future Accreditation

The second round of the EPA Interim Asbestos Bulk Sample Analysis Quality Assurance Program is the last planned round of EPA accreditation. Laboratories which intend to perform analyses for schools must enter the second round of the EPA program at this time. Laboratories which do not enter the round by April 12, 1988 will not be accommodated within the second round of the EPA program. NBS will begin its accreditation program for polarized light microscopy (PLM) laboratories in October 1988. On October 26, 1987, NBS announced the inception of the National Voluntary Laboratory Accreditation Program (NVLAP) for PLM laboratories (52 FR 39977). The NBS NVLAP program accepted applications for the first round of laboratories desiring accreditation through December 28, 1987. At the time, approximately four hundred (400) laboratories entered the program by providing application and an initial deposit. NBS continues to accept applications from laboratories which intend to conduct analyses of bulk samples from schools. Laboratories entering the NVLAP program after the initial application date will be processed on a "first come, first served" basis after the initial group of 400 laboratories has been evaluated.

IV. Expiration Date of EPA Accreditation

Laboratories which were accredited by EPA in the first round of the EPA program will maintain that accreditation until July 12, 1988. These laboratories must perform successfully in the second round in order to continue the accredited status past July 12, 1988. If a laboratory fails to perform satisfactorily, that laboratory will lose its accredited status.

Laboratories which have been accredited in the second round (April 1988) of the EPA program and have applied for accreditation in the NBS PLM program by September 30, 1988, will be considered accredited by EPA until NBS provides formal accreditation for that laboratory. If a laboratory, on the basis of the NBS NVLAP on-site assessment and first round of proficiency testing, fails to perform satisfactorily so that the laboratory does not receive accreditation from NBS, EPA will not consider that laboratory to be accredited. Laboratories accredited by EPA in the April 1988 round which have not made application to NBS for entrance into the program by September 30, 1988, will not be considered accredited by EPA past January 12, 1989. These laboratories will be considered unaccredited until the laboratory has received NBS accreditation.

Laboratories which do not receive accreditation from EPA in the April 1988 round and laboratories which do not participate in the April 1988 round will not be considered accredited until the laboratory successfully participates in the NBS program and receives NBS accreditation. EPA will make no interim arrangements for accreditation of these laboratories. EPA feels that all laboratories have had adequate opportunity to enroll in either of the two rounds of the EPA Interim Bulk Sample Analysis Quality Assurance Program. Laboratories which desire to analyze bulk samples from schools must ensure that they are now (1) entered in the second round of the interim EPA program and (2) entered in the NBS program.

Dated: March 18, 1988.

John A. Moore,

Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 88-6803 Filed 3-28-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 88-87]

Applications for Consolidated Hearing; Evangel Christian School, Inc. and Goforth Media, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Evangel Christian School, Inc.; Mobile, AL.	BPED-860815MB	88-87
B. Goforth Media, Inc.; Mobile, AL.	BPED-870803MB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues bas been standardized and is set forth in its entirety under tbe corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, B
2. Comparative-Noncommercial Educational FM, A,B
3. Ultimate, A, B

3. If there is any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-6773 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-38]

Applications for Consolidated Hearing; Mountain Media, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. Mountain Media, Inc.; Warren, VT.	BPH-851018MC	88-38
B. Selectronics Corp.; Warren, VT.	BPH-851018MD	

Applicant, city and state	File No.	MM docket No.
C. Radio Vermont, Inc.; Warren, VT	BPH-851018ME	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter sbown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, A
2. (a) Site Availability, C
   (b) Section 1.65, C
   (c) Misrepresentation, C
   (d) Basic Qualifications, C
3. Comparative, A, B, C
4. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–6774 Filed 3–28–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 204–010064–015

Title: U.S. Gulf/Colombia Equal Access Agreement

Parties: Lykes Bros. Steamship Co., Inc.; Crowley Caribbean Transport; New York Navigation Company, Inc.; Flota Mercante Grancolombiana, S.A.; CTMT, Inc.; Dock Express Contractors, Inc.

Synopsis: The proposed amendment would delete O S & L of Louisiana, Inc. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 232–011181

Title: Hyundai Merchant Marine Co., Ltd./The EAC Lines Transpacific Service, Ltd., Space Charter and Sailing Agreement

Parties: Hyundai Merchant Marine Co., Ltd. ("HMM"); The EAC Lines Transpacific Service, Ltd. ("EAC")

Synopsis: The proposed agreement would permit the parties to charter space to one another and to rationalize their respective services in the trade between U.S. and Canadian West Coast ports and inland points via such ports, and ports and inland points in the Far East, as well as other Pacific Basin ports and points via transshipment. HMM would designate three to six vessels under the agreement and EAC would designate one to three, each vessel with a capacity of between 1,000 and 3,600 TEU's. The agreement would have an initial term of two years. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 24, 1988.

[FR Doc. 88–6821 Filed 3–28–88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

F and M National 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 April 18, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *F & M National Corporation,* Winchester, Virginia; to acquire 100 percent of the voting shares of Merchants and Farmers Bank, Martinsburg, West Virginia.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *S. Y. Bancorp, Inc.,* Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Stock Yards Bank and Trust Company, Louisville, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Mondovi, Inc.,* Mondovi, Wisconsin, and GEBCO, Inc., Cochrane, Wisconsin; to acquire the successor by merger of First National Bank of Mondovi, Mondovi, Wisconsin, and Mondovi State Bank, Mondovi, Wisconsin, which will operate under the name of Bank of Mondovi, Mondovi, Wisconsin.

Comments on this application must be received by April 20, 1988.

Board of Governors of the Federal Reserve System, March 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–6743 Filed 3–28–88; 8:45 am]

BILLING CODE 6210-01-M

James Heike; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *James Heike*, Mondovi, Wisconsin; to acquire 25 percent of the voting shares of First Mondovi, Inc., Mondovi, Wisconsin, and thereby indirectly acquire the successor by merger of First National Bank of Mondovi, Mondovi, Wisconsin, and Mondovi State Bank, Mondovi, Wisconsin, which will operate under the name of Bank of Mondovi, Mondovi, Wisconsin.

Board of Governors of the Federal Reserve System, March 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6744 Filed 3-28-88; 8:45 am]

BILLING CODE 6210-01-M

National City Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has 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 company has 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 an activity. Unless otherwise noted, these 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 April 15, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation*, Cleveland, Ohio, and NC Acquisition Corp., Cleveland, Ohio; to acquire 100 percent of the voting shares of First Kentucky National Corporation, Louisville, Kentucky, and thereby indirectly acquire First Kentucky Trust Company, Louisville, Kentucky; First National Bank of Louisville, Louisville, Kentucky; First National Bank of Louisville, Henrico County, Virginia; The Third National Bank of Ashland, Ashland, Kentucky; The American National Bank and Trust Company, Bowling Green, Kentucky; Central Bank and Trust Company, Owensboro, Kentucky; Mutual Trust Bank, New Albany, Indiana; and Commerce National Bank, Lexington, Kentucky. In addition, NC Acquisition Corp. proposes to become a bank holding company.

In connection with this application, National City Corporation, proposes to acquire First Kentucky Company, Louisville, Kentucky, and thereby engage in providing investment advisory activities primarily to pension and profit sharing accounts pursuant to § 225.25(b)(4); First Kentucky Investment Advisors, Inc., Louisville, Kentucky, and thereby engage in providing investment advice to individuals and institutions pursuant to § 225.25(b)(4); Churchill Insurance Agency, Inc., Louisville, Kentucky, and thereby engage in acting as agent and broker for credit life, accident, and health insurance that is related to extensions of credit by affiliated banks pursuant to § 225.25(b)(8); National Processing Company, Inc., Louisville, Kentucky; Irving, Texas; Phoenix, Arizona; Homewood, Illinois; and Atlanta, Georgia; and thereby engage in nationwide processing and settlement of consumer-to-corporate financial transactions including processing of bank card sales slips, airline tickets and lockbox remittances pursuant to § 225.25(b)(7) of the Board's Regulation Y; and First Kentucky National Trading Company, directly and indirectly through its ⅓ interest in CDI of Kentucky, Inc., Louisville, Kentucky, and thereby engage in export of domestic goods and services and import of foreign goods; and facilitate third-party barter trade pursuant to section 4(c)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6745 Filed 3-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Health Promotion and Disease Prevention; Establishment

Pursuant to Pub. L. 92-463, the Federal Advisory Committee Act, the Office of the Secretary, Department of Health and Human Services announces the establishment by the Secretary of the Secretary's Council on Health Promotion and Disease Prevention.

The Council shall advise the Secretary on programs and policies related to health promotion and disease prevention. Specifically, it shall be charged to provide links with the private sector to ensure their involvement in the process of developing health promotion and disease prevention objectives for the Nation; enhance the prospects of tying together similar health promotion and disease prevention efforts throughout the private and public sectors; provide advice and consultation

on directions and course corrections for the process of developing health promotion and disease prevention objectives; and review and make recommendations on the final set of health promotion and disease prevention objectives developed for accomplishment by the year 2000.

The Council shall terminate on September 30, 1990.

Dated: March 22, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-6748 Filed 3-28-88; 8:45 am]

BILLING CODE 4160-15-M

Food and Drug Administration

[Docket No. 88N-0124]

Drug Export; Hepatitis B Vaccine (Recombinant, Yeast)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck Sharp & Dohme Research Laboratories has filed an application requesting approval for the export of the biological product Hepatitis B Vaccine (Recombinant, Yeast) to Japan.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendment Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFN-322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires taht the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To facilitate such participation, the agency is providing notice that Merck Sharp & Dohme Research Laboratories, West Point, PA 19486, has filed an application requesting approval for the export of the biological product Hepatitis B Vaccine (Recombinant, Yeast), to Japan. Although FDA has not been able to publish this notice within the prescribed 10-day period, the agency hereby invites public comment on the application. FDA has not yet approved the application but intends to do so when applicable statutory requirements have been met.

The application was received and filed in the Center for Biologics Evaluation and Research on February 17, 1988, which shall be considered the filing date for purposes of the Act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so promptly, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: March 24, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88-6932 Filed 3-25-88; 3:04 pm]

BILLING CODE 4160-01-M

[Docket No. 88N-0090]

International Drug Scheduling; 1971 Convention on Psychotropic Substances; Delta-9-Tetrahydrocannabinol

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and traffickiing of delta-9-tetrahydrocannabinol (delta-9-THC). This information will be considered in preparing a response from the United States to the United Nations and ultimately the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of delta-9-THC. WHO will use the information submitted in response to this notice to assist it in the evaluation of a United States proposal to transfer delta-9-THC from Schedule I to Schedule II of the 1971 Convention on Psychotropic Substances (the Convention). This notice requesting information is required by the Controlled Substances Act (CSA) (21 U.S.C. 811 et seq.).

DATE: Comments by April 28, 1988.

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

FOR FURTHER INFORMATION CONTACT: Andrea Chamblee, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the Convention. Article 2 of the Convention provides that if a party to that Convention or WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. In December 1987 the United States Government transmitted a notification to the Secretary-General of the United Nations requesting the transfer of delta-9-THC from Schedule I to Schedule II of the Convention. This notification, along with supporting information, ws ultimately transmitted by the Secretary-General to WHO.

The Controlled Substances Act (CSA) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when the Secretary-General of the United Nations notifies the United States under Article 2 of the Convention that information has been transmitted by or to WHO that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the

notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance.

The Secretary of HHS has received note NAR/CL.3/1988 dated January 28, 1988. This notice, which is reproduced below, proposes to transfer the drug substance delta-9-THC from Schedule I of the Convention to Schedule II of the same Convention. The contents of the notice are as follows:

Reference: NAR/CL.3/1988. DND 411/1(2) WHO/ECDD 26

The Secretary-General of the United Nations present his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, the Government of the United States of America has informed him that it is of the opinion that delta-9-tetrahydrocannabinol (hereinafter referred to as Δ-^{9}THC), which is presently in Schedule I of the Convention, should be transferred from that Schedule to Schedule II of the same Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention, the Secretary-General hereby transmits the notification in question as annex I to the present note. The information submitted by the Government of the United States in support of that notification is reproduced as annex II.

The present notification has also been transmitted to the World Health Organization pursuant to article 2, paragraph 2, of the Convention, for consideration by the 26th WHO Expert Committee on Drug Dependence which is expected to examine this proposed amendment in April 1989. Under the new review procedures adopted by WHO, the WHO Expert Committee on Drug Dependence is responsible for making scheduling recommendations to the Director-General of WHO.

Any recommendation made by the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraphs 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraphs 5 and 6, read as follows:

5. The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1 relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

In order to assist WHO in the examination of this proposal, WHO would be greatly helped in its task if it had available certain additional data concerning Δ-^{9}-THC. In this connection the Secretary-General would appreciate it if the Government would submit data on Δ-^{9}-THC following the outline contained in the questionnare attached to the present note as annex III.

In view of the fact that data provided by Governments will be used by WHO in the preparation of a review document in October 1988, it would be very much appreciated if any comments which the Government may wish to make with respect to the proposed amendment could be sent to the Secretary-General before 15 May 1988. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.

28 January 1988.

Annex I—Notification Under Article 2, Paragraph 1, of the 1971 Convention on Psychotropic Substances

Subject: Transfer of a Substance From One Schedule to Another Schedule Annexed to the Convention

The Government of the United States of America, being a Party to the 1971 Convention on Psychotropic Substances, refers to the following substance which is at present listed in Schedule I of the 1971 Convention on Psychotropic Substances:

Delta ^{9}-Tetrahydrocannabinol (Delta-9-THC)

The United States Government has information relating to the above substance which, in the Government's opinion, may require the transfer of that substance from the Schedule in which it is at present listed, Schedule I, to Schedule II.

The Government of the United States of America transmits this notification to the Secretary General of the United Nations, in accordance with paragraph 1, of article 2 of the 1971 Convention on Psychotropic Substances, in order to initiate the procedure provided for under that article.

The relevant information in support of this notification is annexed hereto.

United States of America

December 1, 1987

Otis R. Bowen, M.D.,

Secretary, Department of Health and Human Services.

Annex II—Information in Support of Article 2, Paragraph 1, Notification

In support of its notification to transfer delta-9-tetrahydrocannabinol (delta-9-THC) from Schedule I to Schedule II of the 1971 Convention on Psychotropic Substances, the Government of the United States of America adds the following:

1. After a substantial period of clinical investigation, delta-9-THC has been demonstrated to be safe and effective in the treatment of nausea and vomiting experienced by certain patients receiving cancer chemotherapy. In recognition of that demonstrated therapeutic usefulness, the United States Food and Drug Administration (FDA) on May 31, 1985 approved for marketing a drug product whose active ingredient is delta-9-THC. On May 13, 1986, the United States Drug Enforcement Administration (DEA) completed a rescheduling action which resulted in the inclusion of a certain formulation of delta-9-THC in Schedule II of the United States Controlled Substances Act. This action permitted a formulation containing delta-9-THC in sesame oil to be marketed as an antiemetic agent in the medical treatment of cancer patients receiving chemotherapy.

2. Currently, delta-9-THC is controlled internationally in Schedule I of the 1971 Convention on Psychotropic Substances because tetrahydrocannabinol and several identified isomers, including the delta-9 isomer, are subject to Schedule I control under that Convention. This is the most restrictive schedule of the 1971 Convention, and it has been traditionally reserved for substances with a high abuse liability and with very limited, if any, therapeutic usefulness. The Commentary on the 1971 Convention clearly indicates that when a determination to place a substance in Schedule I is made, a strong presumption exists that the substance has very little, if any, therapeutic value. The approval of delta-9-THC by the United States Government for administration as an antiemetic to patients receiving cancer chemotherapy demonstrates that this substance now has been recognized as having therapeutic usefulness. By virtue of that event, delta-9-THC now differs significantly from substances placed in Schedule I of the 1971 Convention because it no longer conforms with the

established criterion that Schedule I substances have very limited, if any, therapeutic usefulness.

3. The United States Government believes that delta-9-THC has a high potential for abuse although available data fail to demonstrate widespread actual abuse. Because delta-9-THC has now demonstrated therapeutic usefulness, we believe that continued international control of delta-9-THC in Schedule I of the 1971 Convention is no longer appropriate. Moreover, the United States believes that delta-9-THC should be transferred to Schedule II of the 1971 Convention because Schedule II provides the most reasonable level of control for this substance which now has accepted therapeutic usefulness.

4. The United States Government wishes to emphasize that although delta-9-THC is the principal psychotropic ingredient in the cannabis plant, delta-9-THC and cannabis are not the same. Cannabis, cannabis resin, cannabis extracts, and tinctures of cannabis are regulated under the Single Convention. The United States reaffirms the differences between these substances which are regulated under the Single Convention and the substance, delta-9-THC. Our request relates only to the substance delta-9-THC and does not apply in any manner to cannabis or the derivatives of cannabis specified in the Single Convention.

5. The United States Government notes that it submitted a proposal to WHO in 1982 seeking to have delta-9-THC transferred from Schedule I to Schedule II of the 1971 Convention on Psychotropic Substances. The Director-General of WHO, based upon the findings of the 6th Review of Psychoactive Substances for International Control, responded to that proposal by recommending to the Secretary-General that delta-9-THC should remain in Schedule I for the present time "pending review of the activities and consequences of tetrahydrocannabinols." That review by WHO concluded that insufficient information was available to adequately judge the "degree of medical usefulness and the potential seriousness of the public health and social problems" that might result from transferring delta-9-THC to Schedule II of the 1971 Convention. The thirtieth session of the Commission on Narcotic Drugs noted that in view of WHO'S recommendation, it need not take any further action. (See paragraph 190 of U.N. document E/CN.7/1983/18.)

6. The United States Government believes that sufficient information is now available on which to judge the degree of therapeutic usefulness and the potential seriousness of public health and social problems which might arise as a result of the medical use of delta-9-THC. Accordingly, the United States now affirms the following:

a. The formal marketing approval of delta-9-THC for administration to patients in the United States conclusively demonstrates the degree of usefulness of delta-9-THC in medical therapy as that phrase is applied in the 1971 Convention. Delta-9-THC is currently under evaluation in several other countries.

b. Both during the clinical investigative period which began in 1981 and since the approval to market delta-9-THC in the United States, there has been no evidence of a public health or social problem associated with the therapeutic use of the approved delta-9-THC product. To the contrary, the epidemiological tracking systems (i.e., the National Institute on Drug Abuse's DAWN system [1], FDA's Adverse Drug Reaction Reporting System, and DEA's STRIDE [2]) customarily relied upon to demonstrate the existence of such problems in the United States have, to date, shown no evidence that delta-9-THC poses a public health or social problem. (See WHO document MNH/82.44 paragraph 11–3.)

7. The United States Government now believes that sufficient information exists to judge the merits of transferring delta-9-THC from Schedule I to Schedule II according to the criteria of the Convention and articulated by WHO 6th Review of Psychoactive Substances. However, we are making no such statement, and we are seeking no such action with respect to any other substance within the class of tetrahydrocannabinoids.

Annex III—United Nations Division of Narcotic Drugs

Vienna International Centre, A–1400 Vienna, Austria

Questionnaire for Data Collection for Use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

SUBSTANCE REPORTED ON: Δ-^{9}-THC

1. Availability of the substance (registered, marketed, dispensed, etc.).
2. Extent of abuse of the substance.
3. Degree of seriousness of the public health and social problems[1] associated with abuse of the substance.
4. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.
5. Identification of the seized substance as a local or foreign manufacture and indication of any commercial markings.
6. Existence of clandestine laboratories manufacturing the substance.

Data and information received by FDA on behalf of HHS in response to this notice will be used to prepare supplemental scientific and medical information concerning delta-^{9}-THC in addition to that previously provided by the United States to the United Nations. HHS will forward that information to the Secretary-General of the United Nations, through the Secretary of State, for WHO's consideration in evaluating the petition to transfer delta-^{9}-THC from Schedule I to Schedule II of the Convention.

Upon receipt of the information HHS will not make any recommendation concerning the proposed action. Rather, HHS will defer such consideration until WHO has made an official recommendation to the Commission on Narcotic Drugs concerning the future schedule status of delta-^{9}-THC. Any HHS position regarding international control of this substance will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before April 28, 1988, submit to the Dockets Management Branch (address above), written comments regarding this action Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should provide data and/or information in the format described in WHO questionnaire for data collection found above. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information

[1] Drug Abuse Warning Network.

[2] System to Retrieve Information from Drug Evidence.

[1] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc. For a thorough examination of the question please refer to WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in WHO Technical Report Series) and Chapter 7 of WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances"

collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910–0226.

Dated: March 24, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–6933, Filed 3–25–88; 3:06 pm]

BILLING CODE 4160–01–M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation

Time and Date: Executive Committee, Sunday, May 1, 1988, 1:00 p.m.–5:00 p.m.; Full Committee, May 2–3, 1988, 9:00 a.m.–5:00 p.m., May 2, 1988, 9:00 a.m.–5:00 p.m., May 3, 1988

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Vivian B. Levin, 330 Independence Ave., SW., Room 4725–North Building, Washington, DC 20201, (202) 245–7634.

Vivian B. Levin,

Executive Director, PCMR.

Date: March 22, 1988.

[FR Doc. 88–6747 Filed 3–28–88; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

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 2127, Block 33, East Cameron Area, offshore Louisiana. Proposed plans for the above area provice for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 21, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Warren Williamson, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amenements of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 21, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–6781 Filed 3–28–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Pending Nominations; Alaska et al.

Nominations for the following properties being considered for listing in the National Register were received by National Park Service before March 19, 1988. Pursuant to § 60.13 of CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 13, 1988.

Patrick Andrus,

Acting Chief of Registration, National Register.

ALASKA

Nome Borough

Nome, *Fort Davis Guardhouse*, Front St.

ARKANSAS

Poinsett County

Marked Tree vicinity, *Marked Tree Lock and Siphons*, On the St. Francis River

Pulaski County

Little Rock, *Buhler House*, 1820 Fair Park Blvd.

CALIFORNIA

San Mateo County

San Mateo, *US Post Main Office—San Mateo*, 210 S. Ellsworth St.

MASSACHUSETTS

Middlesex County

Weston, *Wellington Farm Historic District*, 487–500 Wellesley St.

Norfolk County

Milton, *Milton Centre Historic District*, Canton Ave. between Readsdale Rd. and Thacher and Highland Sts.

Wellesley, *Hunnewell Estates Historic District*, Washington, St. and Pond Rd.

Suffolk County

Boston, *Dorchester Lower Mills Branch Library*, 1110 Washington St.

Boston, *Temple Place Historic District*, 11–55, 26–58 Temple Pl.

Worcester County

Huguenot Fort

Sterling, *Sterling Center Historic District*, Roughly bounded by Meetinghouse Hill and Main, Maple and Kendall Hill, Boulding, Worcester and Princeton

Worcester, *Aurora Hotel (Worcester MRA)*, 652–660 Main St.

MICHIGAN

Mackinac County

St. Ignace vicinity, *St Helena Island Light Station*, St. Helena Island, Lake Michigan

MISSOURI

St. Louis (Independent City)

Shelley House, 4600 Labadie Ave.

MONTANA

Carbon County

Red Lodge vicinity, *Camp Senia Historic District*, Custer National Forest

Lewis and Clark County

Helena, *Algeria Shrine Temple*, Neill and Park Aves.

Powell County

Deer Lodge vicinity, *Prison Brickyard Historic District*, Gravel Rd. off I-90 ¼ mi. S of Deer Lodge

NEW MEXICO

Grant County

Silver City, *Bullard Hotel*, 105 S. Bullard St.

Santa Fee County

Santa Fe, *Camino del Monte Sol Historic District*, Roughly bounded by Acequia Madre, Camino del Monte Sol, El Caminito, and Garcia St.

NORTH CAROLINA

Granville County

Amis, Rufus, House and Mill (Granville County MRA)
Ellixson, William, House (Granville County MRA)
Elmwood (Granville County MRA)
Locust Lawn (Granville County MRA)
Oak Lawn (Granville County MRA)
Bullock vicinity, *Smith, William G., House (Granville County MRA)*, NC 1527
Cornwall vicinity, *Blackwell, James, House (Granville County MRA)*, NC 1411
Grassy Creek vicinity, *Brookland (Granville County MRA)*, NC 1443
Grassy Creek vicinity, *Edgewood (Granville County MRA)*, NC 1437
Grassy Creek vicinity, *Rose Hill (Granville County MRA)*, NC 1442
Grassy Creek vicinity, *Sycamore Valley (Granville County MRA)*, NC 1400
Grassy Creek vicinity, *Wimbish, Lewis, Plantation (Granville County MRA)*, NC 1443
Grissom vicinity *Allen-Mangum House (Granville County MRA)*, NC 1700
Huntsboro vicinity, *Taylor, Col. Richard P., House (Granville County MRA)*, NC 1524
Oxford, *Oxford Historic District (Granville County MRA)*, Roughly bounded by College, New College and Gilliam and Raleigh, Front, Broad and Goshen and Hayes
Oxford, *Thorndale (Granville County MRA)*, 213 W. Thorndale Dr.
Satterwhite vicinity, *Puckett Family Farm (Granville County MRA)*, NC 1333
Stovall vicinity, *Hart, Maurice, House (Granville County MRA)*, NC 1430
Wilbourns vicinity, *Royster, Marcus, Plantation (Granville County MRA)*, NC 96
Wilton vicinity, *Freeman, James W., House (Granville County MRA)*, NC 1623
Wilton vicinity, *Peace, John Jr., House (Granville County MRA)*, NC 1627

OHIO

Cuyahoga County

Cleveland, *Murray Hill School*, 2026 Murray Hill Rd. and 2043 Random Rd.

TEXAS

Johnson County

Cleburne, *Johnson County Courthouse*, 1 Public Sq.

[FR Doc. 88-6727 Filed 3-28-88; 8:46 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290; Sub-No. 5; 88-2]

Approval of Quarterly Rail Cost Adjustment Factor and Decision

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a restated version of the second quarter 1988 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 1988 RCAF is 1.043. Maximum RCAF rate levels may be increased by up to 3.5 percent. The bank of credits established by a decision served October 17, 1986 is now totally exhausted. In the future maximum RCAF rate levels will rise and fall with the quarterly RCAF.

DATE: Effective April 1, 1988.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354 or Robert C. Hasek (202) 275-0938. TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or telephone (202) 289-4357.

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

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: March 21, 1988.

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

Commissioner Simmons concurred. Commissioner Lamboley did not participate.

Noreta R. McGee,
Secretary.

[FR Doc. 88-6738 Filed 3-28-88; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub No. 7)]

Intrastate Rail Rate Authority, Illinois; Certification

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final (5-year unconditional) certification to the Illinois Commerce Commission (Illinois) under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to the condition precedent that Illinois notifies the Commission that it will revise its contract rules in accordance with the Commission's new final contract rules by September 26, 1988.

DATES: Certification will begin April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 23, 1988.

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

Noreta R. McGee,
Secretary.

[FR Doc. 88-6737 Filed 3-28-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"),

Microelectronics and Computer Technology Corporation ("MCC") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of MCC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985, 50 FR 2633. MCC and its shaeholders filed additional notifications on March 29, 1985, October 21, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, and December 23, 1987. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), and January 22, 1988 (53 FR 1859), respectively.

Effective January 1, 1988, Hughes Aircraft Company, a subsidiary of General Motors Corporation, acquired the MCC share owned by Unisys Corporation. Accordingly, General Motors Corporation and each of its subsidiaries, including Hughes Aircraft Company, are parties to MCC; Unisys Corporation and each of its subsidiaries are no longer parties to MCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-6852 Filed 3-28-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Application; McNeilab Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 20, 1988, McNeilab Inc., DBA First State Chemical Company, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 28, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-6734 Filed 3-28-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; Penick Corp.

Pusuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 20, 1988, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Raw opium (9650)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 28, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-6733 Filed 3-28-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Airco Carbon, et al

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 8, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 8, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 21st day of March 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Airco Carbon (OCAW)	Niagara Falls, NY	3/21/88	3/10/88	20,529	Graphite Electrodes.
Baxter Healthcare, Corp. (Workers)	Eaton, OH	3/21/88	2/8/88	20,530	Vinyl Gloves.
Energy Data Search, Inc. (Workers)	Oklahoma City, OK	3/21/88	2/15/88	20,531	Oil & Gas.
Hamman Oil & Refining Co. (Workers)	Houston, TX	3/21/88	3/1/88	20,532	Crude Oil & Gas.
J.A. Friedburg (Company)	Brooklyn, NY	3/21/88	3/4/88	20,533	Handbags & Tote Bags.
J-Von (Workers)	Leonminster, MA	3/21/88	3/9/88	20,534	United Soles & Thermoplastic.
M.H. Fine Company (ILGWU)	Allston, MA	3/21/88	3/9/88	20,535	Maternity Wear.
P.B.M. Machining, Inc. (Teamsters)	Muncie, IN	3/21/88	3/9/88	20,536	Automotive Parts.
Parsons Footwear (UFW)	Parsons, WV	3/21/88	3/7/88	20,537	Men's & Women's Footwear.
S.L. Waber, Inc. (IUE)	Westville, NJ	3/21/88	3/7/88	20,538	Electrical Outlet Strips.
Sterling Engineered Products (UPIU)	Wisconsin Rapids, WI	3/21/88	3/8/88	20,539	High Pressure Laminate.
Sunbury Dress (Workers)	Cranston, RI	3/21/88	3/7/88	20,540	Ladies' Skirts & Slacks.
Transpetco I (Workers)	Spearman, TX	3/21/88	2/11/88	20,541	Crude Oil.
Toland & Johnston, Inc. (Workers)	Oklahoma City, OK	3/21/88	3/11/88	20,542	Oil & Gas.
Washington Manufacturing Company (Workers)	McMinnville, TN	3/21/88	3/10/88	20,543	Men's & Ladie's Sports Wear.
Windsor Records (Workers)	Paterson, NJ	3/21/88	2/22/88	20,544	Records.

[FR Doc. 88-6858 Filed 3-28-88; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 22, 1988.

Affirmative Decisions on Petitions for Modification

Docket No.: M-84-164-C.

FR Notice: 49 FR 35051.

Petitioner: Freeman United Coal Mining Company.

Reg. Affected: 30 CFR 75.326.

Summary of Findings: Petitioner's proposal to course intake air through the belt haulage entry of the south mains from the number 3 portal to ventilate active working places and to install an MSHA approved carbon monoxide fire detection system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M-84-223-C.

FR Notice: 49 FR 47443.

Petitioner: Colorado Westmoreland, Inc.
Reg. Affected: 30 CFR 75.1714–2(e)(3).
Summary of Findings: Petitioner's proposal to cache SCSR's at intervals not to exceed 2,000 feet along the mantrip routes, to check the cached SCSR's once every seven days and to check any unit carried or worn every shift considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–49–C.
FR Notice: 50 FR 32124.
Petitioner: Emery Mining Corporation.
Reg. Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinklers for its fire protection system at main and secondary belt conveyor drives with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–77–C.
FR Notice: 50 FR 35615.
Petitioner: Plateau Mining Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to develop the mine with a two-entry longwall development system and use the belt entry as a separate intake split of air to the longwall face and to provide the belt/intake entry with an environmental monitoring system for low-level carbon monoxide monitoring considered acceptable alternate method. Granted with conditions.

Docket No.: M85–96–C.
FR Notice: 51 FR 36612.
Petitioner: S. & T. Coal Company.
Reg. Affected: 30 CFR 75.1714.
Summary of Findings: Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–126–C.
FR Notice: 51 FR 36490.
Petitioner: Buck Mountain Coal Company.
Reg. Affected: 30 CFR 75.1714.
Summary of Findings: Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–155–C.
FR Notice: 50 FR 47293.
Petitioner: National Mines Corporation.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–85–208–C.
FR Notice: 51 FR 10696.
Petitioner: Eastern Coal Corporation.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish two evaluation points where methane, and direction and velocity of airflow will be checked by a certified person on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–1–C.
FR Notice: 51 FR 12945.
Petitioner: Kaiser Coal Corporation.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use a two-entry longwall panel development in which the belt haulage entry would serve as a return aircourse and longwall panel retreat mining in which the belt haulage entry would serve as an intake aircourse for longwall face ventilation, and to install an early warning fire detection system utilizing low-level carbon monoxide detectors at specific locations with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–38–C.
FR Notice: 51 FR 12946.
Petitioner: Pyro Mining Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install a monitoring system, with carbon monoxide monitors at each belt drive and at intervals not to exceed 2,000 feet along each belt entry with specific safeguards considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–48–C.
FR Notice: 51 FR 25931.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to use the air in the belt entry to ventilate active working places and planned longwall panels and to install a low-level carbon monoxide detection system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–73–C.
FR Notice: 51 FR 33280.
Petitioner: Drummond Company, Inc.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to utilize the belt entries as intake entries and to install a carbon monoxide monitoring system in all belt entries used as intake entries with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–89–C.
FR Notice: 51 FR 30142.
Petitioner: A. & D. Coal Company.
Reg. Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–97–C.
FR Notice: 51 FR 31988.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to use as early-warning fire detection system using a low-level carbon monoxide detection system installed and operated with specific conditions in all belt entries used as intake aircourses, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–98–C.
FR Notice: 51 FR 33819.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to locate the transformers and vacuum breakers in the belt entry splits of air, and to maintain the carbon monoxide detection system in the belt entries with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–168–C.
FR Notice: 51 FR 44388.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide (CO) detection system installed and operated with specific conditions in all belt entries used as intake aircourse considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–169–C.
FR Notice: 51 FR 44389.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install an early warning fire detection system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–170–C.
FR Notice: 51 FR 44389.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to locate the transformers and vacuum breakers in the belt entry splits of air, and to maintain the carbon monoxide detection system in the belt

entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–171–C.
FR Notice: 51 FR 45566.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide (CO) detection system installed and operated with specific conditions in all belt entries used as intake aircourses, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–172–C.
FR Notice: 51 FR 45566.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install a carbon monoxide detection system which will provide identification of a fire within a distance of 2,000 feet or less with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–173–C.
FR Notice: 51 FR 45567.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal that underground substations, power centers, stationary battery charging stations, pumps and rectifiers by ventilated with intake air and be housed in a fire-proof structure equipped with fireproof doors and an automatic fire suppression system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–177–C.
FR Notice: 51 FR 45960.
Petitioner: Mountain Top Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–178–C.
FR Notice: 51 FR 45568.
Petitioner: S and M Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–182–C.
FR Notice: 52 FR 1400.
Petitioner: Mid-Continent Resources, Inc.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal; that a dry-type transformer, not more than 750 KVA, be ventilated with intake air and be housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–183–C.
FR Notice: 51 FR 45567.
Petitioner: Hickory Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting hope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–186–C.
FR Notice: 52 FR 1398.
Petitioner: Eastern Associated Coal Corporation.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to adverse roof conditions certain areas of the mine are unsafe for travel. Petitioner's proposal to check the entry inby the adverse roof and outby on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–187–C.
FR Notice: 51 FR 47319.
Petitioner: Barnhart Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting hope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–188–C.
FR Notice: 52 FR 1986.
Petitioner: Bull Run Mining Company, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–189–C.
FR Notice: 51 FR 47322.
Petitioner: Southern Ohio Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–190–C.
FR Notice: 52 FR 1987.
Petitioner: H. L. and W. Coal Company.
Reg. Affected: 30 CFR 75.1714.
Summary of Findings: Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered, acceptable alternate method. Granted with conditions.

Docket No.: M–86–192–C.
FR Notice: 52 FR 1987.
Petitioner: Island Creek Coal Company.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish check points to monitor airflow at specific locations and check stoppings in neutral airways on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–193–C.
FR Notice: 52 FR 1401.
Petitioner: S. and T. Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–194–C.
FR Notice: 52 FR 1398.
Petitioner: Ash Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–197–C.
FR Notice: 52 FR 1400
Petitioner: Mountain Top Coal Company
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–204–C.
FR Notice: 51 FR 47320.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide detection system installed and operated with specific conditions in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–205–C.
FR Notice: 51 FR 47320.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal that underground substations, power centers, stationary battery charging stations, pumps, and rectifiers be ventilated with intake air and be housed in a fireproof structure equipped with fire-proof doors and an automatic fire suppression system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–206–C.
FR Notice: 51 FR 47321.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install a carbon monoxide detection system which will provide identification of a fire within a distance of 2,000 feet or less with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–207–C.
FR Notice: 52 FR 4683.
Petitioner: Monterey Coal Company.
Reg. Affected: 30 CFR 77.216.3(a).
Summary of Findings: Petitioner's proposal to inspect the impoundments and monitor instruments on a monthly basis in lieu of every seven days and to supplement the monthly inspections with additional inspections should major precipitation or run off occur considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–209–C.
FR Notice: 52 FR 1988.
Petitioner: Red Bone Mining Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–212–C.
FR Notice: 52 FR 1988.
Petitioner: Liberty Coal Company.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to a roof fall certain areas of the return are unsafe to travel. Petitioner's proposal to establish check points on both sides of the fall considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–213–C.
FR Notice: 51 FR 47321.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–86–215–C.
FR Notice: 52 FR 1399.
Petitioner: Jeff Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–216–C.
FR Notice: 51 FR 46958.
Petitioner: South Ridge Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–217–C.
FR Notice: 52 FR 1988.
Petitioner: South Ridge Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate methods. Granted with conditions.

Docket No.: M–86–218–C.
FR Notice: 52 FR 1400.
Petitioner: MEPCO, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–219–C.
FR Notice: 51 FR 47322.
Petitioner: Consolidation Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal that underground substations, power centers, stationary battery charging stations, pumps, and rectifiers be ventilated with intake air and be housed in a fireproof structure equipped with an automatic fire suppression system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86 224–C.
FR Notice: 52 FR 1401.
Petitioner: Pammlid Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking batter plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–231–C.
FR Notice: 52 FR 12096.
Petitioner: Carbon Black Mining Company, Inc.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–86–232–C.
FR Notice: 52 FR 4205.
Petitioner: Kanawha Coal Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide (CO) detection system installed an operated with specific conditions in all belt entries used as intake aircourses, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–235–C.
FR Notice: 52 FR 4203.
Petitioner: Kentucky Carbon Corporation.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to install a computer aided carbon monoxide mine monitoring system at intervals not to exceed two thousand lineal feet, and at each belt drive and tailpiece with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–236–C.
FR Notice: 52 FR 4203.
Petitioner: Kentucky Carbon Corporation.
Reg. Affected: 30 CFR 75.1103–4(a).

Summary of Findings: Petitioner's proposal to install an early warning fire detection system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–237–C.
FR Notice: 52 FR 4203.
Petitioner: Kerr-McGee Coal Corporation.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and to install a carbon monoxide detection system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–242–C.
FR Notice: 52 FR 6218.
Petitioner: Old Ben Coal Company.
Reg. Affected: 30 CFR 77.900.
Summary of Findings: Petitioner's proposal to dewater the mining pits using pontoon-mounted pumps, fed electrically from mobile substations transforming the pit distribution voltage to 480 volt, 3 phase, installed with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–245–C.
FR Notice: 52 FR 4684.
Petitioner: 12 Vein Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–247–C.
FR Notice: 52 FR 4204.
Petitioner: Drummond Company, Inc.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install low level carbon monoxide detectors with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–250–C.
FR Notice: 52 FR 4681.
Petitioner: Kintzel Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–251–C.
FR Notice: 52 FR 4683.
Petitioner: Plateau Mining Company.
Reg. Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinklers for its fire protection system at main and secondary belt conveyor drives with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–252–C.
FR Notice: 52 FR 4682.
Petitioner: Big Hill Coal Company.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–86–254–C.
FR Notice: 52 FR 7045.
Petitioner: Ronald Donton Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–4–M.
FR Notice: 51 FR 12944.
Petitioner: Demar Boren Mining, Inc.
Reg. Affected: 30 CFR 57.21078.
Summary of Findings: Petitioner's proposal to install a nonpermissible pump inside a steel casing, which is capable of dewatering the mine with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–8–M.
FR Notice: 51 FR 39437.
Petitioner: Pathfinder Mines Corporation.
Reg. Affected: 30 CFR 56.18020.
Summary of Findings: Petitioner's proposal to allow the operator of the SK35 Reed hydraulic drill to work alone on weekends with specific safeguards and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–16–M.
FR Notice: 52 FR 5219.
Petitioner: Sunnyside Gold Corporation.
Reg. Affected: 30 CFR 57.11059.
Summary of Findings: Petitioner's proposal that a separate and independent exhalation valve assembly be installed into the exhalation tube of the Dreager breathing hose and a positive automatic shutoff quick connect coupler be installed to the installation hose of the Dreager breathing tubes considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–18–M.
FR Notice: 52 FR 5216.
Petitioner: Harrod Concrete and Stone Company.
Reg. Affected: 30 CFR 57.15030.
Summary of Findings: Petitioner's proposal to allow employees entering the underground mine to park and retrieve diesel powered vehicles, without having a self-rescue device during cold weather with specific conditions, considered acceptable alternate method. Granted with conditions.

[FR Doc. 88–6866 Filed 3–28–88; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–88–40–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to extremely poor roof conditions and a roof fall certain areas of the mine are unsafe to travel. Further rehabilitation of these areas would expose miners to hazardous conditions.

3. Petitioner further states that the existing fall has had little or no effect on the quantity of air passing. The fall is of limited extent and can be visually examined from both sides in its entirety. Also, the aircourse is not designated as an escapeway.

4. As an alternate method, petitioner states that—

(a) A certified person will make a weekly examination of the return at specific locations;

(b) Air readings will be taken as part of the weekly examination. The date, time, and results of the examination will be recorded in a book on the surface; and

(c) If at any time air quantity indicates a weekly difference of ten percent, an immediate investigation will be

conducted by the mine foreman and appropriate actions will be taken.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Dated: March 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6859 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-13-C]

Cyprus Empire Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Empire Corporation, P.O. Box 68, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the installation requirements of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single line of automatic sprinklers for fire protection systems at main and secondary belt conveyor drives. In support of this request, petitioner states that—

(a) Automatic sprinklers will be maintained at a distance of not more than ten feet apart with actuation temperatures between 200 degrees F., and 230 degrees F., and will be located so that the discharge of water will extend over the belt drive;

(b) During operation of the system, water pressure will not be less than 10 psi;

(c) The sprinkler line will be a minimum length of 50 feet of belt at the drive;

(d) A test to insure proper operation will be conducted during the installation of each new system and during the subsequent repair or replacement of any critical part thereof; and

(e) In areas where freezing conditions exist, the sprinkler system would be charged with a 50/50 mixture of anti-freeze (Ethylene-Glycol).

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1999. Copies of the petition are available for inspection at the address.

Dated: March 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6860 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-32-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Dominion No. 4 Mine (I.D. No. 44-06417) and its Dominion No. 5 Mine (I.D. No. 44-06051) both located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes will be drilled to a distance of at least 20 feet in advance of the working place and will be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they will be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes will also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees. Such rib holes will be drilled on one or both ribs of such working place as may be necessary for adequate protection of miners in such place.

2. Petitioner requests a modification of the standard to allow for a 20 foot cut to be taken in the face. In further support of this request, petitioner states that—

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib, restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the conrer of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of +/− 5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the mines affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April

28, 1988. Copies of the petition are available for inspection at that address.

Date March 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6861 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-16-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.902 (low—and medium-voltage ground check monitor circuits) to its Crown Mine No. II (I.D. No. 11-02236) located in Macoupin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low—and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check will cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. As an alternate method, petitioner proposes to use 480 volt, three phase, power distribution in the underground surge bin feeder system without the need of a ground check circuit.

3. In support of this request, petitioner states that—

(a) The surge bin feeder system consisting of R.O.M. feeder, buffer, belt, rotary grizzly, crusher, and magnet is housed in a steel and reinforced concrete structure;

(b) The electrical circuits serving the system are carried in galvanized rigid steel conduit which is assembled with threaded connections and is supported by steel strut. The steel strut is welded to the steel structure, anchored to the concrete walls, or suspended from the roof with anchor bolts;

(c) The 480 volt, three phase motors are stationary and are mounted on a common steel frame structure;

(d) Grounding for the 480 volt, three phase equipment is provided by a continuous copper ground conductor interconnecting the ground lugs of the 480 volt, three phase transformer and other pieces of stationary equipment; and

(e) Grounding is also provided by the rigid conduit and the common steel frame structure.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6862 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-36-C]

H.L. & W. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.L. & W. Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its H.L. & W. Slope (I.D. No. 36-07825) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Petitioner states that installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6863 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-14-C]

Rockbridge Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Rockbridge Coal Corporation, Inc., P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.1107 (fire suppression devices) to its No. 1 Mine (I.D. No. 15-06243) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fire suppression devices be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids be used in the hydraulic systems of such equipment.

2. As an alternate method, petitioner proposes to place a 10 pound fire extinguisher on the front and back of the Galis 3510 roof drill in lieu of automatic fire sensors and hydraulic oil that is fire retardant.

3. In support of this request, petitioner states that the fire extinguishers will be within reach of the operator at all times and the machine will be required to be checked for compliance before and after each shift to ensure the fire extinguishers are working properly.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6864 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-33-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, Hampton Division , Route 1, Box 39, Clothier, West Virginia 2507 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hampton No. 4 Mine (I.D. No. 46-01282) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A Summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that application of the standard would result in a diminution of safety because of adverse roof conditions in the area of the 1 South return aircourse at the mine. Further rehabiliatation of such area of that return aircourse would expose miners to extremely hazardous conditions.

3. As an alternate method, petitioner proposes to establish air-monitoring check points at the inby end and outby end of the adverse roof conditions in the 1 South return aircourse a distance of approximately five hundred feet.

4. In support of this request, petitioner states that air measurements and gas readings will be made weekly at each check point, and a record of such measurements and readings will be recorded in a book kept on the surface at the mine.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6865 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

New Mexico State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letter dated June 4, 1987, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the Plan, the State submitted State standards identical to 29 CFR Part 1910, General Industry Standards unless otherwise noted. New Mexico's re-adoption of 29 CFR Part 1910 applies to both the private and public sectors, with the exception of OSHR 200, 1910.156, which applies to the private sector only. New Mexico has a separate public sector fire protection standard, OSHR 202.

These standards, contained in New Mexico Occupational Health and Safety Regulation 200, General Industry Standards, revised as of July 1, 1986, were promulgated on May 8, 1987, in accordance with applicable State law with the following four exceptions.

(1) Omit 1910.1;

(2) Omit 1910.2(c), (d), and (e);

(3) Omit 1910.4;

(4) Omit 1910.5 (a) and (f). Six amendments and one addition were also adopted. These are found at Occupational Health and Safety Regulation 200(B)(5), (6), (7), (8), (9), (10), and (11) as follows.

(5) References in 1910.20 to 29 CFR 1913 shall be construed as references to the appropriate Division regulation or policy;

(6) Amend 1910.1047, Ethylene Oxide, as contained in 51 FR 25053 (July 10, 1986);

(7) Amend 1910.430, Commercial Diving, as contained in 51 FR 34597 (September 18, 1986);

(8) Amend 1910.145; Accident Prevention Signs and Tags, as contained in 51 FR 33260-33261 (Sepember 19, 1986);

(9) Amend 1910.1200, Hazard Communication, as contained in 51 FR 34597 (September 30, 1986);

(10) Amend 1910.120, Hazardous Waste Operations and Emergency Response; Interim Final Rule, as contained in 51 FR 45663-45675 (December 19, 1986); and

(11) Amend 29 CFR Part 1910, Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks, as contained in 51 FR 34560-34562 (September 29, 1986).

The subject standards became effective July 1, 1987, pursuant to New Mexico State Law, Section 50-9-1 through 50-9-25.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and accordingly are approved. The four omissions noted in Section 1 were omitted because they are not pertinent to the New Mexico State Plan and deal only with Federal OSHA authority.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor—OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Director, Environmental Improvement Division, 1190 St. Francis Drive, Room 2200, Santa Fe, New Mexico 87501; and the Office of State Programs, 200 Constitution Avenue NW., Room N3700 Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposals and making the Regional Administrator's approval effective upon publication for the following reasons:

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be necessary.

The decision is effective March 29, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Dallas, Texas, this thirtieth day of September, 1987.

Gilbert J. Saulter,

Regional Administrator.

[FR Doc. 88-6867 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated June 22, 1987, from Richard A. Davis, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standards amendment comparable to the Federal standards amendment to 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide, as published in the **Federal Register** (49 FR 25796) on June 22, 1984. The State standards amendment is contained in WAC 296-62-07353. The State Standards Amendment was originally adopted on December 11, 1984, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 84-24. Corrections were adopted on April 19, 1985 under Washington Administrative Order No. 85-09. The State's standard was reviewed by the Regional Office and returned for correction of editorial errors on May 12, 1986. These corrections were adopted on March 12, 1987 and became effective April 11, 1987 under Washington Administrative Order No. 87-01.

The Ethylene Oxide labeling requirements, published in the **Federal Register** on October 11, 1985 (50 FR 41491), were adopted by the State on July 25, 1986, effective August 25, 1986, and are contained in WAC 296-62-07353(10)(a)(i). The State standard amendment was submitted by letter dated September 26, 1986, from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator. Approval of this State standard amendment was withheld until the corrections to the original standard were adopted.

2. Decision

The above State standards amendment has been reviewed and compared with the relevant Federal standards amendment and OSHA has determined that the State standards amendment is identical to the Federal standards amendment.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 29, 1988.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 1st day of September, 1987.

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 88-6868 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-7088]

Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit purchases and sales by certain "individual retirement accounts," as defined in Code section 408(a) ("IRAs"), of American Eagle bullion coins ("Coins") in principal transactions from or to broker-dealers in Coins which are "authorized purchasers" of Coins in bulk

quantities from the United States Mint (the "Mint") and which are also "disqualified persons," within the meaning of Code section 4975(e)(2), with respect to the IRAs. The proposed exemption would also permit the interest-free extension of credit in connection with such purchases and sales. The proposed exemption would, if granted, affect persons with an interest in the investments of IRAs, including IRA depositors and their beneficiaries, as well as persons who provide custodial services to IRAs.

DATES: Written comments should be submitted to the Department before May 31, 1988. If granted, the exemption would be effective January 1, 1987.

ADDRESSES: All written comments (preferably 3 copies) should be sent to: Pension and Welfare Benefits Administration, Room N–5669, 200 Constitution Avenue NW., Washington, DC 20210, Attn: American Eagle Exemption. The application for exemption, as well as all comments, will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Pension and Welfare Benefits Administration, Mark Greenstein, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, Washington, DC 20210, (202) 523–8671 (not a toll-free number) or Daniel J. Maguire, Plan Benefits Security Division, Office of the Solicitor, (202) 523–9596 (not a toll-free number).

SUPPLEMENTARY INFORMATION: this document contains a notice of pendency before the Department of a proposed class exemption from the taxes imposed by section 4975 (a) and (b) of the Code by reason of certain transactions described in section 4975(c)(1) (A), (B), and (D) of the Code. In part, this proposal is the Department's response to an application filed on behalf of Prudential Bache Securities, Inc. (Pru-Bache), which functions as a broker-dealer in Coins. Pru-Bache represents that industry practices have developed which are standard for the market in gold bullion coins. Accordingly, the Department is treating the application as a request for a class exemption. The application was filed under section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), by a letter dated March 4, 1987. The application was clarified by supplemental letters dated March 19, June 2, and October 30, 1987. In addition, the document contains proposals the Department is making on its own motion pursuant to the authority described above.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Description of the Requested Exemption

The applicant requests a retroactive and prospective exemption from the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) and (B) of the Code for purchases and sales of Coins,[1] as well as extensions of credit related thereto,[2] between certain IRAs (herein referred to as Title II IRAs) [3] and disqualified persons with respect to such IRAs which are authorized purchasers of Coins from the Mint and which act as broker-dealers in Coins. Under the requested exemption, such disqualified persons must be banks or other approved persons referenced in Code sections 408(a)(2) and 408(h).[4]

Section 4975(c)(1)(A) of the Code prohibits, among other things, the sale or exchange of any property between a plan and a disqualified person. Section 4975(c)(1)(B) of the Code prohibits the lending of money or other extension of credit between a plan and a disqualified person.[5] Code section 4975(e)(1) states that an individual retirement account described in Code section 408(a) is included within the definition of the term "plan" for purposes of section 4975. The term "disqualified person", as defined in Code section 4975(e)(2), includes persons which provide services to a plan. In the absence of an exemption, any sale or exchange of assets or extension of credit between such a person and a plan would be a prohibited transaction. Additionally, any furnishing of goods, services, or facilities between such a person and a plan, or any transfer to, or use by or for the benefit of, such a person of the income or assets of a plan would be a prohibited transaction in the absence of an exemption. Section 408(m) of the Code treats the acquisition by IRAs of collectibles, including any coin, as a distribution. Section 1144 of the Tax Reform Act of 1986 added Code section 408(m)(3), which provides an exception from the general rule for investments in Coins.

Pru-Bache represents that it and a number of similarly situated broker-dealers in Coins serve as nonbank trustees or custodians of IRAs under Code section 408(a)(2) and 408(h).[6] In this capacity, the broker-dealers are service providers to plans, and therefore are disqualified persons with respect to the IRAs under Code section 4975(e)(2)(B). Accordingly, in the absence of an exemption, any sale or

[1] The Coins are American Eagle United States gold or silver bullion coins which are further described in section 5112(a) (7), (8), (9), and (10) and section (e) of Title 31 of the United States Code.

[2] The applicant is concerned that, for purposes of the prohibited transaction rules, an extension of credit may exist during the period between the execution of a Coin order and settlement. The applicant represents that the exchange of funds for Coin(s) on the books of the authorized purchaser at settlement is simultaneous.

[3] The exemption requested by the applicant would apply only to IRAs which are not "employee benefit plans" covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA). In this regard, 29 CFR 2510.3–2(d) explains that IRAs described in Code section 408(a) will not be considered pension plans subject to Title I of ERISA, provided that: (1) No contributions are made by an employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is to permit the sponsor to publicize the program without endorsement to employees or members, to collect contributions through payroll deductions or dues checkoffs and to remit them to the sponsor; and (4) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

[4] Section 408(a)(2) requires that the trustee of an IRA be a bank or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of that section. See Treasury Regulations 1.408–2(b)(2) and 1.401–12(n). The regulations prescribe criteria which are designed to ensure that nonbank trustees will be responsible fiduciaries.

[5] The applicant did not request an exemption from the restrictions of section 4975(c)(1) (C) through (F) of the Code. Section 4975(c)(1)(C) prohibits the furnishing of goods, services, or facilities between a plan and a disqualified person. Code section 4975(d)(2) provides an exemption for the provision of services by a disqualified person if the conditions of that exemption are met. See 26 CFR 54.4975–6. Section 4975(c)(1)(D) prohibits the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan. Section 4975(c)(1)(E) prohibits any act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account. Section 4975(c)(1)(F) prohibits the receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

[6] Pru-Bache states that it, Merrill Lynch, Pierce, Fenner & Smith Inc. and Shearson Lehman Brothers Inc., each of which is an authorized purchaser, are three of the largest nonbank custodians in terms of the number of IRAs sponsored. The applicant estimates that the three firms together are custodians for far in excess of 1,000,000 IRAs.

exchange of assets or extension of credit between a broker-dealer and an IRA to which it provides services would be prohibited.

2. The Coins

The Coins are American Eagle gold and silver bullion coins which Public Laws 99–61 and 99–185 directed the Mint to produce and sell. The gold Coins are produced in four denominations: $50, $25, $10 and $5 and contain 1 oz., ½ oz., ¼ oz. and 1/10 oz. of gold respectively. The silver Coin has a denomination of $1 and contains 1 oz. of silver. The Mint is interested in ensuring that the Coins be competitive with the bullion products produced by others. In order to be competitive, the Mint has determined that the Coins must be as widely available to the public as possible and priced in line with comparable gold and silver bullion products. The Mint has determined that this can best be accomplished by using the already well-established distribution network in the private sector by selling the Coins in bulk directly to business firms having appropriate resources and expertise and which act as dealers in gold and silver bullion coins.

3. Authorized Purchasers

The Mint has established stringent criteria which must be met in order to be eligible to purchase Coins directly from the Mint in bulk quantities. A firm qualifies to be such a purchaser ("authorized purchaser") only if it: (1) Is an experienced and substantial marketmaker in gold bullion coins, with respect to the purchase of gold Coins and in silver coins, bars and/or rounds, with respect to the purchase of silver Coins; (2) has a tangible net worth in excess of $50,000,000, with liquid assets of at least $10,000,000 for gold Coins and has a tangible net worth in excess of $5,000,000, with liquid assets of at least $1,000,000 for silver Coins;[7] (3) in the case of gold Coins, sold an average of 75,000 or more ounces of such coins per year in 1984 and 1985 through its client network; and (4) submits to the Mint a letter from an independent and internationally accepted accounting firm concerning its books and policy of being substantially hedged in its precious metals transactions.[8]

As of March 4, 1987, only 26 firms have qualified as authorized purchasers of gold Coins and only 31 firms have qualified as authorized purchasers of silver Coins. The continued qualification of the firms as authorized purchasers depends on their continuing to abide by standards of conduct which are intended to protect customers, including IRAs, dealing with the firms.

4. Pricing of Coins

The Mint currently sells the Coins to authorized purchasers at a price based on the Coins' bullion content established by the applicable London Fix on the day following the orders plus a set premium which covers the Mint's manufacturing and marketing expenses. An authorized purchaser incurs additional related costs including shipping, hedge transactions to protect against market fluctuations, financing, and storage. The retail market for the Coins is highly competitive, and it it represented that, as of the time of the application, the one ounce gold Coins retailed at between 5 percent and 7 percent above their bullion value. Other factors which will influence the final prices at which Coins are ultimately sold and purchased in transactions between authorized purchasers and retail customers, including IRAs, are the size of the order involved, commissions to sales personnel, overhead expenses, profit margins, and the price currently being charged by competitors.

Transactions involving an authorized purchaser and a customer are similar to transactions in over-the-counter stocks where the broker-dealer acts as a principal in buying and selling shares of stock. The customer pays an asked price when purchasing and is paid the bid price on a sale.

The applicant contends that an agency transaction, in which a disqualified person would act as an agent for an IRA in the purchase and sale of Coins rather than as a principal, could come within the statutory exemption provided by Code section 4975(d)(2) from the application of certain of the prohibited transaction restrictions of Code section 4975(c)(1). In this regard, the applicant represents that any such agency arrangement would be less advantageous to IRAs than a principal transaction between an IRA and an authorized purchaser because of the higher transaction costs and/or the lack of flexibility which would be involved in an agency arrangement. An authorized purchaser acting as agent for an IRA in the purchase of Coins would, if only to meet its overhead costs in the transaction, add to the price a commission to compensate it for acting as agent.

Any third party, non-disqualified person which is an authorized purchaser and from which an IRA could purchase Coins would, the applicant states, price Coins similarly to the applicant and other authorized purchasers which are disqualified persons due to similar overhead costs and competitive pressures. In the event the third party dealer is not itself an authorized purchaser, the net price to an IRA would also reflect overhead costs and possible additional expenses incurred by such intermediary dealer in acquiring Coins from an authorized purchaser, or on the secondary market.

The applicant represents that an arrangement where an IRA purchases Coins from the Mint, with the applicant or other authorized purchaser acting as its agent, would also be less advantageous for the IRA. As the Mint sells only in minimum orders of 5,000 ounces of gold Coins and 50,000 ounces of silver Coins, IRA orders would have to be aggregated with other orders or purchases for the authorized purchaser's own inventory and executed only when the number of Coins equaled these significant minimum quantities. According to the applicant, this would leave the IRA subject to market fluctuations during the potentially substantial period of time between the placing of the order and its execution.

The applicant represents that independent sources exist that can be used by the person directing the IRA to verify that the purchase or sale of Coins between the IRA and an authorized purchaser is at an arm's-length price. In the case of the one ounce American Eagle Coin, prices are regularly listed in the financial sections of major newspapers, along with other gold cash prices and prices for the Maple Leaf, Krugerrand and other foreign gold coins Pru-Bache understands that at least one major dealer in Coins, Manfra, Tordella and Brooks, Inc., maintains publicly available hourly price quotes for Coins and that price quotes are also readily available from many other dealers.

The IRA market would represent only a portion of the Coin business handled by authorized purchasers. According to the applicant, transactions are executed by Pru-Bache, as well as each other authorized purchaser that is also a broker-dealer, on a continuous basis. The applicant further represents that transactions in Coins between authorized purchasers and unrelated parties generally provide an objective benchmark against which transactions between IRAs and disqualified persons

[7] The applicant understands that the Mint may permit the use of an irrevocable letter of credit meeting specified conditions and drawn on an "FDIC" insured bank in satisfaction of a portion of the net worth test. It further understands that the Mint may waive the liquid asset requirements under certain circumstances.

[8] United States Mint release dated July 28, 1986.

can be measured. Relatively small quantities of Coins of a given denomination may be minted in certain years. Under these circumstances, transactions between authorized purchasers and unrelated parties may be too infrequent to provide a meaningful basis for price comparisons against which transactions in Coins between IRAs and disqualified persons can be tested. In this regard, the exemption requested by the applicant provides that all Coins of a given denomination must be priced by the authorized purchaser at the same price, regardless of the year in which the Coins were minted.

5. The IRAs

A characteristic of the IRAs with respect to which relief is requested is that the person directing the IRA investments is not the authorized purchaser or its affiliate and could choose from a wide variety of permissible IRA investments, only one of which is Coins. Moreover, most of the IRAs with respect to which relief is requested are "self-directed." In this context, the IRA depositor has complete control over all the investment decisions with respect to the assets in his or her account, and no assets can be purchased or sold except at his or her direction. However, the applicant also requests relief with respect to transactions in Coins involving IRAs with respect to which the IRA depositor has given investment discretion over assets in the IRA to an independent third person who is unrelated to the authorized purchaser or any affiliate thereof with which the IRA effects transactions in Coins.

6. Conditions Contained in the Requested Exemption

The applicant asks that the requested exemptive relief be based upon the following conditions:

(1) The disqualified person selling Coins to or purchasing Coins from an IRA pursuant to the requested exemption must be an authorized purchaser of Coins which regularly and in a material amount engages in Coin transactions with persons other than IRAs in each Coin denomination which such disqualified person offers to sell to or purchase from IRAs.

(2) Any such disqualified person must also be a bank or other approved person referred to in Code section 408(a)(2) and 408(h).

(3) The IRA must offer a wide range of investment alternatives.

(4) Each Coin transaction covered by the requested exemption must be at least as favorable to the IRA as an arm's length transaction with an unrelated party would be.

(5) Neither the disqualified person nor any affiliate thereof can be a "fiduciary" within the meaning of Code section 4975(e)(3) [9] with respect to the IRA assets involved in the transaction. The applicant requests that, for purposes of this paragraph, a disqualified person not be deemed to be a fiduciary with respect to IRA assets solely by reason of providing custodial services to the IRA. In this connection, the applicant also emphasizes that, under the requested exemption, the IRA depositor would have to know the exact price at which the depositor's Coin order will be executed before authorizing the transaction.

(6) A separate written confirmation must be issued with respect to each transaction involving the purchase or sale of Coins. The number and price of the Coins bought or sold and date of the transaction must be clearly indicated on each confirmation, as well as the fact that the disqualified person acted as principal in the transaction. The confirmation of a Coin transaction must be issued at least within the same period of time as would a confirmation for a securities transaction in the over-the-counter market executed on the same date as the Coin transaction, but in no event must more than 10 days elapse between the execution of the transaction and issuance of the confirmation.

(7) Payments in settlement of Coin transactions must be made promptly, but in no event more than 10 days after the execution of the transaction.

(8) The disqualified person entering into Coin transactions with IRAs pursuant to the requested exemption must prepare for distribution to customers disclosure information regarding material information concerning Coins, their storage and transactions therein (including a general description of the manner in which coins are priced in the market). This information must indicate any minimum requirement for the number of Coins which may be bought or sold and must include a reference to any additional fees or special or minimum transaction costs that will be incurred as a result of the purchase or sale of Coins by an IRA. Such material must be made available to IRA depositors prior to the placing of any purchase or sale orders for Coins.

(9) All fees charged by the disqualified person with respect to services involving the Coins, including but not limited to fees for the storage of Coins, must be reasonable.

(10) No interest may be charged on any outstanding extension of credit with respect to transactions in Coins covered by the requested exemption.

(11) To permit verification that a Coin transaction has been consummated on a basis at least as favorable as an arms-length transaction with an unrelated party, the disqualified person must maintain or cause to be maintained for a period of at least six years from the date of the transaction such records as are necessary for the appropriate governmental entity and the IRA depositor involved to determine that the conditions of the exemption have been met. These records must be available for examination during normal business hours and must include daily information indicating each customer (including each IRA and each other client) with whom a Coin transaction was consummated, the price and number of Coins involved and the date and time of day at which the transaction was consummated. Notwithstanding these recordkeeping requirements, a prohibited transaction should not be deemed to have occurred if, due to circumstances beyond the control of the disqualified person, such records are lost or destroyed prior to the end of the six-year period.

7. Hardship or Economic Loss if the Requested Relief is Denied

According to the applicant, if the requested relief is not granted, the purpose of Code section 408(m)(3), which was added to the Code by section 1144(a) of the Tax Reform Act of 1986 to permit IRAs to invest in Coins commencing in 1987, will be frustrated, and the Mint's publicly expressed desire that the Coins be as widely available to the public as possible without sizable transaction costs will be thwarted. The applicant further represents that the ability of authorized purchasers to maintain an orderly, uninterrupted and two-way market for Coins, as is required pursuant to the agreement each authorized purchaser enters into with the Mint, will be impeded.

[9] Section 4975(e)(3) defines a fiduciary as any person who (A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition or its assets, (B) renders investment advice for a fee or other compensation direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so or (C) has any discretionary authority or discretionary responsibility in the administration of such plan. This term includes any person designated by a named fiduciary to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan pursuant to ERISA section 405(c)(1)(B).

The applicant contends that, because of the significant portion of the IRA market which Pru-Bache and certain other authorized purchasers represent, a large number of IRA depositors will be disadvantaged if direct purchases and sales are not permissible. In this regard, the applicant notes that for a firm such as Pru-Bache, not only IRAs of its own customers are involved, but also those IRAs of the customers of its correspondent firms for which it serves as custodian.

Discussion of the Proposed Exemption

1. Scope

The exemption proposed herein by the Department would provide relief from the restrictions of Code section 4975(c)(1) (A), (B) and (D) for the purchase and sale of Coins between Title II IRAs and disqualified persons with respect to such IRAs which are authorized purchasers of Coins from the Mint,[10] which act as broker-dealers in Coins, and which are banks or other approved persons referenced in Code section 408(a)(2) and 408(h) with respect to such IRAs. Under the proposal, relief would be provided only for purchases and sales of Coins between such disqualified persons and IRAs with respect to which the IRA depositor either self-directs the IRA investments or delegates investment discretion over assets in the IRA to a third person who is independent of and unrelated to the disqualified person or any affiliate thereof. The proposed exemption would also permit the extension of credit on an interest-free basis in connection with such purchases and sales. Although the applicant requested relief only from the restrictions of Code section 4975(c)(1) (A) and (B), the transactions contemplated by the exemption may be prohibited by section 4975(c)(1)(D). Accordingly, the Department has expanded the scope of the proposed exemption to cover transactions described in Code section 4975(c)(1)(D). The proposed exemption does not include relief from the restrictions of Code section 4975(c)(1)(C). The Department believes that any relief from the restrictions of that section that may be appropriate in connection with the services contemplated by the application is available in accordance with the conditions contained in Code section 4975(d)(2). See 26 CFR 54.4975–6. Consistent with this approach, the Department does not believe that it is necessary to specify in the proposed exemption, as suggested by the applicant, that all fees for services involving the Coins must be reasonable, as one of the conditions of the statutory exemptions for services described in 26 CFR 54.4975–6 is that compensation for the provision of services by a party in interest must be reasonable.

The applicant did not request relief from the self-dealing restrictions of Code section 4975(c)(1) (E) or (F), explaining in this regard that a disqualified person should not, for purposes of the exemption, be deemed to be a fiduciary solely by reason of providing custodial services to IRAs. In this connection, the Department is not providing any relief from the restrictions of Code section 4975(c)(1) (E) or (F).

Therefore, no relief would be provided under the proposal for any fiduciary self-dealing, including that of independent third parties who are authorized to direct transactions in Coins on behalf of an IRA. The Department notes, however, that if a fiduciary does not exercise any of the authority or control that makes him a fiduciary under Code section 4975(e)(3) in connection with a transaction covered by this proposal, that fiduciary has not engaged in a transaction described in Code section 4975(c)(1)(E).

The proposed exemption limits relief to transactions where neither the authorized purchaser nor any affiliate has any discretionary authority or control respecting the management or disposition of the IRA assets involved in the transaction or renders investment advice respecting those assets. For example, no relief would be provided where general investment instructions are received by an authorized purchaser or affiliate which has discretion to choose between the purchase of gold or silver coins.

2. Proposed Conditions

The proposed exemption contains no special rules with respect to the kinds of investments which must be available to Title II IRAs which invest in Coins. However, the proposed exemption incorporates an arm's-length standard which is more comprehensive than the standard suggested by the applicant. Under the applicant's suggested standard, each covered Coin transaction would have to be at least as favorable to the IRA as an arm's-length transaction with an unrelated party would be. Under the Department's proposed retroactive and prospective exemption, covered Coin transactions would be required to meet both a "general" and a "particular" arm's-length test. Under the "general" arm's length test, at the time the transaction is entered into, the terms of the transaction must be not less favorable to the IRA than the terms generally available in comparable Coin transactions between unrelated parties. Under the "particular" arm's-length test, at the time the transaction is entered into, the terms of the transaction must be not less favorable to the IRA than the terms afforded by the authorized purchaser or any affiliate thereof in comparable Coin transactions involving unrelated parties.[11]

Under the proposed exemption, payment for and delivery of Coins in settlement of covered transactions must be made simultaneously, and in no event more than 10 business days after the execution [12] of a transaction. An extension of credit in connection with a covered purchase or sale of Coins qualifies for relief under the proposal only if no interest is charged for the period of time between execution and settlement.

The proposed exemption also would require that the person directing a covered transaction is provided with current price quotations so that he or she will know the exact price at which the purchase or sale will occur. In addition, the proposed exemption would require, with respect to transactions entered into subsequent to the date 90 days after grant of the final exemption, that an authorized purchaser provide to the person directing investments of the IRA, prior to engaging in a covered transaction with the IRA, certain timely and material written information concerning transactions in Coins. The information would include a discussion of the final class exemption granted by the Department with respect to transactions in Coins, an explanation of arrangements for the storage of Coins and a general description of the manner in which Coins are priced in the market.

[10] Under the proposed exemption, IRA transactions in Coins would be eligible for relief under the proposal only if they are effected with authorized purchasers which also regularly engage in Coin transactions with persons other than IRAs.

[11] For example, where a disqualified person provides a price quote to an IRA for the purchase of a Coin from an IRA, whether the price should include any numismatic premium will depend upon the applicable facts and circumstances, e.g. where the price paid for a Coin in a transaction between unrelated parties would reflect a numismatic premium, an equivalent premium must be reflected in the price which a disqualified person pays for a Coin in a comparable transaction with an IRA.

[12] The proposed exemption clarifies the term "execution" by defining it as the acceptance of an offer to purchase or sell a Coin in a covered transaction such that both the IRA and the authorized purchaser are legally obligated to complete the transaction as directed. For example, it is the Department's understanding that the terms of the transaction are binding on both the IRA and the disqualified person at the time the quoted price is accepted by the party directing transactions on behalf of the IRA.

This information must explain that the disqualified person will act as a principal in Coin transactions with IRAs and include a description of any minimum requirement for the number of Coins which can be purchased or sold, as well as an explanation of any fees or special or minimum transaction costs that would be incurred as the result of the purchase or sale of Coins by an IRA. Although such information would have to be provided to IRA customers prior to the placing of any purchase or sale orders for Coins, it should be noted that this basic requirement can be satisfied by one-time, "up-front" disclosure to both new an existing IRA customers. However, supplemental information must be furnished to the person directing investments of IRAs which have invested in Coins by the authorized purchaser within a reasonable time if the market, or the basis on which the disqualified person purchases, sells or holds Coins, changes materially.

The proposal also provides that the authorized purchaser must promptly (but in no event later than ten days after the execution of a transaction) issue a separate written confirmation statement with respect to each of the transactions covered by the exemption, indicating the price and number of Coins involved, the date of the transaction and the status of the authorized purchaser as a principal in the transaction. Finally, the authorized purchaser must retain records which are necessary to determine that the conditions of the exemption have been met, including relevant information concerning each transaction in Coins between the authorized purchaser and all IRA and non-IRA customers. Such data must include the price and number of Coins involved, and the date and time at which each transaction was executed. These records are designed to enable the appropriate governmental entity or persons directing the covered transactions to determine whether the conditions of the exemption have been met.

3. Notice to Interested Parties

Because all those with an interest in the investments of IRAs could conceivably be considered interested persons, the Department has determined that the only practical form of notice is publication in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the exemption affect the requirement of section 408(a) of the Code that the IRA must operate for the exclusive benefit of the individual for whose benefit the IRA is maintained and his or her beneficiaries.

(2) Before this exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and of the individuals for whose benefit the IRAs are maintained and protective of the rights of those individuals and their beneficiaries.

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(5) If granted, the pending class exemption will not extend to the restrictions pertaining to fiduciaries described in section 4975(c)(1) (E) or (F) of the Code.

Written Comments

All persons are invited to submit written comments to the address and within the time period set forth above. All comments will be made part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the address set forth above.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting provisions that are included in this proposed class exemption are being submitted to the Office of Management and Budget for its review and approval.

Proposed Exemption

On the basis of the facts and representations set forth in the application and this document, the Department proposes the following exemption under the authority of section 4975(c)(2) of the Code, pursuant to ERISA Procedure 75–1:

Section I: Definitions and Special Rules

The following definitions apply to this exemption.

(a) "Authorized purchasers" are banks or other persons referenced in section 408(a)(2) or (h)— of the Internal Revenue Code of 1986 (Code) that are approved by the United States Mint (the Mint), for eligibility to purchase the American Eagle U.S. gold or silver bullion coins which are described in section 5112(a) (7), (8) and (10) or section (e) of Title 31 of the United States Code (Coins), directly from the Mint in bulk quantities.

(b) The term "covered transaction" means a transaction described in section II of this exemption.

(c) "IRA" means an individual retirement account described in Code section 408(a) with respect to which the authorized purchaser is a disqualified person. For purposes of this exemption, the term "IRA" shall not include an IRA which is an employee benefit plan covered by Title I of the Employee Retirement Income Security Act of 1974.

(d) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person;

(2) Any officer, director, partner, employee, member of the family (as defined in Code section 4975(e)(6)), brother, sister, or spouse of a brother or sister, of the person;

(3) Any corporation or partnership of which the person is an officer, director or partner.

The term "control" means the power or exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "execution"means the acceptance of an offer to purchase or sell a Coin in a covered transaction such that both the IRA and the authorized purchaser are legally obligated to complete the transaction as directed.

(f) The term "accredited person" means any duly authorized employee of the Department of Labor or the Internal Revenue Service or the person directing the investments of an IRA.

(g) The term "independent third party" excludes the authorized purchaser and any person affiliated therewith.

Section II. Covered Transactions

Effective January 1, 1987, if each condition of section III of this exemption is satisfied, the taxes imposed by sections 4975 (a) and (b) of the Code by

reason of section 4975(c)(1) (A) (B) or (D) of the Code shall not apply to—

(a) The purchase of Coins by an IRA from an authorized purchaser;

(b) The sale by an IRA of Coins to an authorized purchaser; or

(c) The extension of credit in connection with the settlement of transactions described in (a) or (b).

Section III. Conditions

(a) The transaction is directed either by the individual for whose benefit the IRA is maintained or by an independent third party appointed by such individual.

(b) Neither the authorized purchaser nor any affiliate thereof has any discretionary authority or control respecting the management or disposition of the IRA assets involved in the transaction, or renders investment advice (within the meaning of 26 CFR 54.4975–9(c)) respecting those assets.

(c) Each denomination of Coins offered by IRAs pursuant to this exemption is purchased and sold by the authorized purchaser in transactions with unrelated parties in the ordinary course of its business.

(d) At the time the transaction is executed, the terms of the transaction must be not less favorable to the IRA than (i) the terms generally available in comparable Coin transactions between unrelated parties, and (ii) the terms afforded by the disqualified person or any affiliate thereof in comparable Coin transactions involving unrelated parties.

(e) Payment for, and delivery of, Coins in settlement of a covered transaction is made simultaneously and in no event more than 10 business days after execution of the transaction involved, and no interest is charged for the period of time between execution and settlement.

(f) The disqualified person provides current price quotations to the person directing the investments of the IRA immediately prior to the time a covered transaction is executed so that such person will know the exact price at which the purchase or sale will occur.

(g) A separate written confirmation statement is issued with respect to each covered transaction to the person who directs the transaction for the IRA. The confirmation shall disclose the date, quantity, and price of the Coins bought or sold as well as the fact that the disqualified person acted as a principal in the transaction. The confirmation shall be issued in no event more than 10 business days after the execution of the transaction.

(h) With regard to transactions entered into subsequent to [enter date 90 days after grant of the final exemption], prior to its engaging in covered transactions the disqualified person prepares and provides to the person directing the investments of the IRA material information regarding transactions in Coins, and furnishes supplemental information to the person directing the investments of IRAs which have invested in Coins if material changes occur. This information must include:

(1) A general description of the manner in which Coins are priced in the market.

(2) Disclosure of any fees for services or special or minimum transaction costs that will be incurred as the result of the purchase or sale of Coins by an IRA.

(3) Any minimum quantity of Coins which must be bought or sold.

(4) Disclosure of the role of the disqualified person as a principal in the transaction.

(5) An explanantion that the purchase or sale of Coins between the IRA and the authorized purchaser would be prohibited in the absence of an exemption, a discussion of the arm's-length pricing standards of this exemption and disclosure that records are accessible which would enable the person directing investments of the IRA to determine whether the conditions of this exemption have been met.

(i) The disqualified person maintains or causes to be maintained for a period of at least six years from the date of settlement of a covered transaction such records as are necessary to allow accredited persons to determine whether the conditions of the exemption have been met. The records shall include daily information indicating each customer (including each IRA and each other client) with whom a transaction involving Coins was consummated, the price and number of Coins involved, and the date and time at which the transaction was executed. The persons directing the investments of an IRA are not authorized to examine a disqualified person's trade secrets or financial information which is privileged or confidential. The records must be reasonably accessible and must be available for examination during normal business hours. Notwithstanding these recordkeeping requirements, a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the disqualified person, such records are lost or destroyed prior to the end of the six year period.

Signed at Washington, DC, this 23rd day of March, 1988.

David M. Walker,

CPA, Assistant Secretary of Labor Pension ansd Welfare Benefits Administration, United States Department of Labor.

[FR Doc. 88–6869 Filed 3–28–88; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88–30]

NASA Advisory Council (NAC) Aeronautics Advisory Committee (AAC); Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Acoustic Wind Tunnel Requirements.

DATE AND TIME: April 18, 1988, 8:30 a.m. to 4:30 p.m.; and April 19, 1988, 8:30 a.m. to 11:30 a.m.

ADDRESS: Florida State University, Education Building, Room 202, Tallahassee, FL 32306.

FOR FURTHER INFORMATION CONTACT: Dr. Randolph A. Graves, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Acoustic Wind Tunnel Requirements, chaired by Mr. Dean Borgman, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

April 18, 1988

8:30 a.m.—Discussion of Initial Draft of Final Report Recommendations.

4:30 p.m.—Adjourn.

April 19, 1988

8:30 a.m.—Summary of Final Report.
11:30 a.m.—Adjourn.

March 22, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-6795 Filed 3-28-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-31]

NASA Advisory Council (NAC) Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATE AND TIME: April 20, 1988, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2775.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. The Committee, chaired by Mr. Norman R. Augustine, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda:

April 20, 1988

8:30 a.m.—Opening Remarks by Chairman.
8:45 a.m.—Overview—Space Technology.
9:15 a.m.—Long Range Program Planning—Space Technology/Civil Space Technology Initiative/ Pathfinder.
1:30 p.m.—Ad Hoc Review Team Reports.
3 p.m.—Action Summary from SSTAC/Aerospace Research and Technology Subcommittee Meeting.
4 p.m.—Summary Session.
4:30 p.m.—Adjourn.

March 22, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-6796 Filed 3-28-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-498]

Issuance of Facility Operating License; Houston Lighting and Power Co. et al.

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-76 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas, (the licensees) which authorizes operation of the South Texas Project, Unit 1 (the facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan.

On August 21, 1987, the Commission issued Facility Operating License No. NPF-71 to the licensees which authorized operation of South Texas Project, Unit 1, to five percent of reactor power (190 megawatts thermal). License NPF-767 supersedes NPF-71.

The South Texas Project, Unit 1 is a pressurized water reactor located in Matagorda County, Texas, west of the Colorado River, 8 miles north-northwest of the town of Matagorda and about 89 miles southwest of Houston.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the South Texas Project was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (dated August 1986) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on June 18, 1987 (52 FR 23217), July 2, 1987 (52 FR 25094) and December 16, 1987 (52 FR 47805).

For further details with respect to this section, see (1) Facility Operating License No. NPF-76, with Technical Specifications (NUREG-1305) and the Environmental Protection Plan; (2) the Commission's Safety Evaluation Report, dated April 1986 (NUREG-0781), and Supplements 1, thru 5; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; and (5) the Final Environmental Statement, dated August 1986 (NUREG-1711).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway , Wharton, Texas 77488 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the Facility Operating License No. NPF-76 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects-III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1, thru 5 (NUREG-0781) and the Final Environmental Statement (NUREG-1171) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982 or by calling (202) 275-2060 or (202) 275-2171. All orders should clearly identify the NRC publication number and requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland this 22nd day of March, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate–IV, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6808 Filed 3–28–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: U.S 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 proposed revision of forms which collect information from the public. Standard Form 171, Application for Federal Employment, Standard Form 171–A, Continuation Sheet for SF 171, and the SF 172, Amendment to Application for Federal Employment—SF 171, comprise the major application forms used by applicants for Federal employment. OPM is responsible for open competitive examinations for admission to the competitive service, in accordance with section 3302, Title 5, United States Code. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 20 working days of the date of this publication.

ADDRESSES: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415,

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CALL: Laurence T. Lorenz, (202) 653–8076.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–6809 Filed 3–28–88; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on February 23, 1988 (53 FR 5333). Individual authorities established or revoked under Schedule A, B, or C between February 1, 1988, and February 29, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during February.

Schedule B

No Schedule B exceptions were established or revoked during February.

Schedule C

Department of Agriculture

One Staff Assistant to the Special Assistant to the Secretary. Effective February 3, 1988.

One Confidential Assistant to the Assistant Secretary for Economics. Effective February 3, 1988.

One Private Secretary to the Deputy Assistant Secretary for Administration. Effective February 24, 1988.

One Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective February 24, 1988.

One Confidential Assistant (Congressional Relations) to the Assistant Secretary for Governmental and Public Affairs. Effective February 29, 1988.

One Secretary (Stenography) to the Administrator for Federal Grain Inspection Service. Effective February 29, 1988.

One Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective February 29, 1988.

Department of Air Force

One Secretary (Stenography) to the Assistant to the Vice President for National Security Affairs. Effective February 29, 1988.

Department of Commerce

One Confidential Aide to the Special Assistant to the Secretary. Effective February 10, 1988.

One Special Assistant to the Director for Office of Public Affairs. Effective February 12, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Export Enforcement. Effective February 12, 1988.

One Director, Office of Public Affairs to the Under Secretary. Effective February 22, 1988.

One Director, Congressional Affairs Staff to the Under Secretary. Effective February 24, 1988.

One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism. Effective February 29, 1988.

Department of Defense

One Special Assistant to the Assistant Secretary of Defense, Legislative Affairs for Foreign Policy. Effective February 2, 1988.

One Private Secretary to the Assistant Secretary for Reserve Affairs. Effective February 3, 1988.

One Special Assistant to the Director for Strategic Defense Initiative Organization. Effective February 10, 1988.

One Special Assistant to the Assistant Secretary of Defense for International Security Policy. Effective February 25, 1988.

Department of Education

One Special Assistant to the Executive Assistant for Private Education. Effective February 9, 1988.

One Confidential Assistant to the Under Secretary. Effective February 12, 1988.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective February 12, 1988.

One Director to the Deputy Assistant Secretary for Legislation Liaison. Effective February 16, 1988.

One Staff Assistant to the Deputy Under Secretary for Management. Effective February 22, 1988.

One Deputy Secretary's Regional Representative to the Secretary's Regional Representative. Effective February 26, 1988.

Department of Energy

One Staff Assistant to the Administrator for Economic Regulatory Administration. Effective February 12, 1988.

One Special Assistant to the Director for Office of Policy, Planning and Analysis. Effective February 16, 1988.

One Staff Assistant, Programs and Policy to the Assistant Secretary for Management and Administration. Effective February 19, 1988.

One Staff Assistant to the Director for Office of External Affairs. Effective February 26, 1988.

One Special Project Liaison Specialist to the Director for Division of Public Liaison. Effective February 26, 1988.

Department of Health and Human Services

Two Special Assistants to the Commissioner for Social Security. Effective February 4, 1988.

One Confidential Assistant to the Commissioner for Social Security. Effective February 5, 1988.

One Congressional Relations Specialist to the Deputy Commissioner for Policy and External Affairs. Effective February 11, 1988.

One Special Assistant to the Assistant Secretary for Human Development Services. Effective February 12, 1988.

Department of Housing and Urban Development

One Special Assistant to the Secretary for Executive Secretariat Operations. Effective February 12, 1988.

One Executive Assistant to the Regional Administrator. Effective February 24, 1988.

One Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs. Effective February 26, 1988.

One Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective February 29, 1988.

One Special Assistant to the Deputy Assistant Secretary for Program Development. Effective February 29, 1988.

Department of the Interior

One Congressional Affairs Officer to the Assistant to the Director/Director for Office of External Affairs. Effective February 16, 1988.

One Confidential Assistant to the Deputy Solicitor. Effective February 25, 1988.

Department of Justice

One Special Assistant to the Deputy Assistant Attorney General. Effective February 18, 1988.

Department of Labor

One Staff Assistant to the Deputy Assistant Secretary for Mine Safety and Health. Effective February 16, 1988.

One Director to the Assistant Secretary for Public and Intergovernmental Affairs. Effective February 22, 1988.

Department of State

One Protocol Officer (Visits), to the Chief of Protocol. Effective February 12, 1988.

Department of Transportation

One Staff Assistant to the Secretary. Effective February 16, 1988.

One director, Office of Speechwriting and Research to the Assistant Secretary for Public Affairs. Effective February 18, 1988.

Department of the Treasury

One Special Assistasnt to the Assistant Secretary for Public Affairs and Public Liaison. Effective February 16, 1988.

ACTION

One Director of Public Affairs to the Director. Effective February 26, 1988.

Agency for International Development

One Public Affairs Specialist to the Director for Office of Public Liaison. Effective February 24, 1988.

One Congressional Liaison Officer to the Deputy Director for Office of Legislative Affairs. Effective February 26, 1988.

Arms Control and Disarmament

One Secretary (Steno) to the Director. Effective February 16, 1988.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective February 5, 1988.

One Special Assistant to the Commissioner. Effective February 19, 1988.

Equal Employment Opportunity Commission

One Confidential Assistant to the Director for Office of Communication and Legislative Affairs. Effective February 12, 1988.

Federal Communications Commission

One Confidential Staff Assistant to the Director for Office of Legislative Affairs. Effective February 9, 1988.

Federal Deposit Insurance Corporation

One Legislative Advisor to the Director for Legislative Affairs. Effective February 4, 1988.

General Services Administration

One Director, Office of Business and Industry Affairs to the Associate Administrator for Congressional and Industry Relations. Effective February 19, 1988.

One Confidential Assistant to the Associate Administrator for Congressional and Industry Relations. Effective February 26, 1988.

International Trade Commission

One Confidential Assistant to a Commissioner. Effective February 22, 1988.

Office of Management and Budget

One Secretary to the Director. Effective February 26, 1988.

Office of Personnel Management

One Deputy Director to the Director for Office of Congressional Relations. Effective February 1, 1988.

Small Business Administration

One Special Assistant to the Assistant Administrator for Public Communications. Effective February 24, 1988.

Securities and Exchange Commission

One Confidential Assistant to the Commissioner. Effective February 19, 1988.

One Confidential Assistant to the Regional Administrator. Effective February 22, 1988.

United States Tax Court

One Trial Clerk to the Judge. Effective February 12, 1988.

One Trial Clerk to the Judge. Effective February 24, 1988.

U.S. Office of Personnel Management.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Constance Horner,

Director.

[FR Doc. 88–6632 Filed 3–28–88; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 23, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the

Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Global Government Plus Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-3162)
Owens & Minor, Inc.
Common Stock, $2.00 Par Value (File No. 7-3163)
Total Petroleum (North America) Ltd.
$2.88 Preferred Stock (File No. 7-3164)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 13, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extentions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6855 Filed 3-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16334; 812-6643]

Freedom Investment Trust (Formerly Filed Under Freedom Telecommunications Fund) et al.; Application

March 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Freedom Investment Trust ("Trust"), Tucker, Anthony & R.L. Day, Inc. ("Tucker Anthony") and Tucker Anthony Management Corporation ("Adviser") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under section 11(a) for approval of an exchange offer and under section 6(c) for an exemption from section 22(d).

Summary of Application: Applicants seek an order (i) approving the exchange of shares of a new portfolio of the Trust, an open-end, management investment company, for securities of a registered unit investment trust, and (ii) amending prior orders to permit the waiver of a contingent deferred sales charge ("CDSL") in certain instances and to delay application of existing exchange privileges to the new portfolio.

Filing Dates: The application was filed on March 6, 1987, and amended on May 26, 1987, under the name of Freedom Telecommunications Fund, and amended thereafter under the name of Freedom Investment Trust on January 13, and March 21, 1988.

Hearing of Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 11, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Alan C. Porter, Esq., Sullivan & Worcester, 1025 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-3026 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations: 1. The Trust is a Massachusetts business trust organized on March 29, 1984, and is registered under the 1940 Act of an open-end, management investment company. The Trust consists of seven separate portfolios which are currently being offered to the public ("Funds"). The Adviser serves as investment adviser to each of the Funds. The Adviser is a Massachusetts corporation and is an indirect, wholly-owned subsidiary of John Hancock Mutual Life Insurance Company ("John Hancock"). Tucker Anthony, a brokerage firm which is a member of the New York Stock Exchange, is also a subsidiary of John Hancock. Tucker Anthony serves as a principal underwriter for the Funds pursuant to a distribution agreement, adopted in accordance with Rule 12b-1 under the 1940 Act, with the Trust.

2. The Telephone Exchange Fund—AT&T Shares ("UIT"), created under New York law, is registered as a unit investment trust under the 1940 Act. Tucker Anthony is one of its sponsors and the United States Trust Company of New York ("U.S. Trust") is its trustee. The UIT's objective is to permit investors holding common stock of American Telephone and Telegraph Company ("AT&T") to continue to hold the common stocks of AT&T and the seven regional telephone companies distributed to AT&T shareholders in 1983 pursuant to a court ordered reorganization of AT&T in the convenient form of units of the UIT. The UIT will terminate according to the terms of its Trust Indenture and Agreement ("Indenture") on October 1, 2008. Under such terms, the sponsors, in their discretion, may jointly agree to terminate the UIT prior to that time if its aggregate net asset value is less than approximately $40 million. The Indenture also provides that the UIT shall terminate if its aggregate net asset value is less than $1 million. As of December 30, 1987, the aggregate net asset value of the UIT was approximately $120,342,537.

3. Applicants propose to offer to exchange the shares of a new portfolio of the Trust, the Freedom Telecommunications Fund ("New Fund"), for units of the UIT of the basis of the relative new asset values of such shares and units ("Exchange Offer") on the date the exchange is consumated ("Exchange Data"). The Trust will enter into a dealer manager agreement with Tucker Anthony, and Tucker Anthony will agree to use its best efforts to form and manage a group of soliciting dealers, including itself ("Soliciting Dealers"), to solicit deposits of units of the UIT to be exchanged for shares of the New Fund.

4. All tendered units of the UIT that have been accepted for deposit under the Exchange Offer will be held in escrow by U.S. Trust, as exchange agent, until the Exchange Date, subject to the satisfaction of the conditions of the Exchange Offer. The unitholder will have the right to withdraw or redeem his units, and will remain the beneficial owner of such units until the Exchange Offer is consummated. Dividends payable to unitholders of the UIT prior

to consummation of the Exchange Offer will be forwarded in full to tendering unitholders. It is a condition of the Exchange Offer that UIT units having an aggregate net asset value of at least $25 million shall have been accepted for deposit prior to the Exchange Date. If the Exchange Offer is not consummated, U.S. Trust will return all units promptly without expense to tendering unitholders. If the Exchange Offer is consummated, then on the Exchange Date, units of the UIT accepted for deposit will be redeemed in kind and U.S. Trust, as exchange agent, will deliver the underlying common stocks of AT&T and the seven regional telephone companies to the Trust. Upon receipt of such common stocks, the Trust will issue shares of the New Fund at their net asset value in an aggregate amount equal to the aggregate redemption price (i.e., net asset value) of the units of the UIT redeemed, and the New Fund will commence operations.

5. Under the terms of the Exchange Offer, tendering unitholders of the UIT will not be charged a sales load, selling commission or administrative charge for exchanging their units for shares of the New Fund. Tucker Anthony will pay fees to Soliciting Dealers in connection with tender of UIT units. No other fees will be charged by Tucker Anthony or the Soliciting Dealers in respect of such solicitations. The New Fund will pay its organizational expenses and certain offering expenses in connection with the Exchange Offer, but it will not pay Soliciting Dealers' fees.

6. Consummation of the Exchange Offer is also conditioned upon favorable rulings from the Internal Revenue Service ("IRS") to the effect that, for federal income tax purposes, the Exchange Offer will be treated as a tax-free reorganization. To obtain this ruling, the Trust has represented to the IRS that for a period of six months after consummation of the Exchange Offer it will only issue shares of the New Fund to those UIT unitholders who become shareholders of the New Fund under the Exchange Offer. Thereafter, shares of the New Fund will be continuously offered to the public and distributed in the manner described below.

7. In Investment Company Act Release No. 15118 (May 28, 1986), Investment Company Act Release No. 15455 (December 4, 1986) and Investment Company Act Release No. 15745 (May 19, 1987) (collectively, "Prior Orders"), the Trust obtained orders of the SEC which permit the Trust to impose, defer and waive, in certain instances, a CDSL on redemptions of shares of existing and future Funds of the Trust. Pursuant to the Prior Orders, the New Fund will impose, defer and waive, in certain instances, a CDSL upon redemption of shares of the New Fund. The New Fund also proposes to waive the CDSL upon redemption of those shares of the New Funds acquired under the Exchange Offer. The Prior Orders also permit certain exchange privileges among the present and future Funds of the Trust and certain other mutual funds in the Freedom Family of Funds and Tucker Anthony Family of Funds. The Applicants propose to delay application of such exchange privileges with respect to the shareholders of the New Fund until shares of the New Fund are offered to the public generally (i.e., six months after consummation of the Exchange Offer). Thereafter, Applicants propose to implement the exchange privileges with respect to the New Fund pursuant to the Prior Orders. Also, shareholders of other Funds of the Trust and the other mutual funds referred to above will only be able to exchange their shares for shares of the New Fund when shares of the New Fund are offered to the public generally. In addition, if shares of the New Fund that were issued upon consummation of the Exchange Offer are exchanged for shares of any of the mutual funds covered by the Prior Orders, it is proposed that any CDSL payable upon redemption of such shares be waived. Finally, it is expected that the New Fund will adopt a distribution plan under Rule 12b–1 under the 1940 Act comparable to those adopted by the Funds other than Freedom Money Market Fund, a Fund of the Trust which has no such plan. All of these transactions are and will be subject to the conditions of the Prior Orders which require compliance with the provisions of Rule 22d–1 under the 1940 Act, Rule 12b–1 under the 1940 Act in its present form and as it may be revised in the future, and proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the SEC.

Applicants' Legal Conclusions: 1. The terms and conditions of the Exchange Offer are reasonable and fair and are consistent with the policy and purposes of sections 11(a) and 11(c) of the 1940 Act. Further, the Exchange Offer will not have inequitable results to the shareholders of the New Fund or unitholders of the UIT, and the advantages which will accrue to Tucker Anthony and the Adviser as a result of the Exchange Offer will not constitute overreaching. Since it was not feasible to reorganize the UIT into a management investment company, the Applicants proposed the Exchange Offer on the basis of the relative net asset values of the New Fund and the UIT without any sales charge, selling commission or administrative fee. The New Fund will not pay Soliciting Dealers' fees, but will pay its organizational expenses and certain offering expenses in connection with the Exchange Offer which will be comparable in type and amount to those paid by other newly-organized, open-end, management investment companies. Applicants believe it is fair for the New Fund to bear its reasonable organizational and offering expenses. In addition, as a result of the $25 million minimum deposit requirement of the Exchange Offer and in light of the Adviser's commitment to limit expenses of the New Fund prior to commencement of a public offering of the New Fund's shares, the New Fund will have sufficient net assets to commence operations as an economically viable fund. While it is not possible for Applicants to predict whether the New Fund will experience net redemptions thereafter, redemptions of the New Fund shares may be offset, in whole or in part, by sales of additional shares of the New Fund.

2. Although the New Fund shareholders will incur certain ongoing operating expenses, some of which will be materially higher than the level of ongoing operating expenses incurred by the UIT and others which are not incurred by the UIT, such expenses will be necessary, customary, reasonable and fair, and comparable in amount to the expenses incurred by other open-end, management investment companies. In addition, the New Fund shareholders will experience benefits attributable to management of the New Fund's portfolio which will outweigh the higher level of costs and expenses. Any management fee will be subject to approval by the New Fund's trustees and shareholders and to the fiduciary obligations imposed by the 1940 Act. In addition, the Adviser has agreed to condition the order on certain undertakings described below designed to limit the New Fund's expenses prior to commencement of a public offering of the New Fund's shares. Furthermore, no amounts paid to Tucker Anthony pursuant to the Rule 12b–1 plan will be used to pay expenses of the Exchange Offer.

3. The New Fund's expected level of portfolio turnover will not be excessive, will be reasonable and fair, and will compare favorably with the portfolio turnover rates of other management investment companies. Also, the New Fund will incur brokerage commissions on its portfolio transactions which will

be reasonable and fair, will be comparable in the amount to those paid by other other-end, management investment companies, will not be excessive, and on the whole will be more than offset by the gains from the purchases and sales of portfolio securities resulting in such commissions.

4. In sum, additional expenses which will result from operation of the New Fund as a management investment company should not preclude unitholders of the UIT from making an informed decision to exchange their units of the UIT for shares of the New Fund. Applicants have agreed to condition the order on certain undertakings designed to ensure that the UIT unitholders will receive disclosure documents which will prominently disclose the higher expenses of the New Fund compared to the UIT. Also, the operation of the New Fund as a separate portfolio of the Trust will result in certain significant operational economies which might not otherwise be available to the New Fund if it were operated as a separate entity. The New Fund will be a separable portfolio of the Trust and all expenses of the New Fund will be charged solely to the assets of the New Fund. Any expenses not identifiable solely to the New Fund will be allocated among the portfolios of the Trust in such manner as the Trustees of the Trust, in their sole discretion, deem to be fair and equitable. Currently, the Trustees of the Trust allocate such expenses on the basis of relative net asset values and intend to do so in the future.

5. The Exchange Offer will not adversely affect unitholders of the UIT who determine not to exchange their units. The redemption of units of the UIT in connection with the Exchange Offer is not expected to increase materially the UIT's expenses on a per unit basis, nor is it expected to result in the premature termination of the UIT, especially in light of the $25 million minimum deposit requirement of the Exchange Offer and the agreement by Tucker Anthony and the Adviser to condition the order on certain undertakings designed to prevent such events. Furthermore, the termination of the UIT, either prematurely or pursuant to its terms, will not result in unfairness to remaining unitholders since they would receive a liquidating distribution in kind of the underlying stock of the UIT and any undistributed cash dividends.

6. Although IRS qualifications may result in the generation of some capital gains to the New Fund and its shareholders, the tax-free exchange will postpone realization of capital gains on all the New Fund's portfolio securities and, in any case, will minimize such gains, transaction costs and brokerage commissions. In addition, the New Fund's prospectus will prominently disclose the tax consequences to permit UIT unitholders to consider whether to participate in the Exchange Offer in light of their particular tax situation.

7. The requested order pursuant to section 6(c) of the 1940 Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

The waiver of the CDSL upon redemption of New Fund shares issued upon consummation of the Exchange Offer will not result in the occurrence of any of the abuses intended to be covered by section 22(d) of the 1940 Act. Such waiver will not harm the New Fund, the other mutual funds covered by the Prior Orders or their shareholders, nor will it unfairly discriminate among shareholders or investors. In addition, the CDSL and waiver thereof will be done subject to the conditions set forth in the Prior Orders.

8. Furthermore, it is necessary and appropriate to amend the Prior Orders to the extent necessary to delay application of the exchange privilege described in such Prior Orders with respect to the New Fund in order to maintain the tax-free status of the Exchange Offer.

Applicants' Conditions: If the requested order is granted, Applicants agree to the following conditions:

1. In order to assure that UIT unitholders will be fully informed of the potential disadvantages (as well as the potential advantages) of the Exchange Offer, Applicants will prepare and distribute promotional material in connection with the Exchange Offer which prominently discloses that the New Fund expects to incur management fees, brokerage commissions, 12b–1 plan payments, transfer agent fees and expenses, custody fees and expenses, and other ongoing operating expenses which, in the aggregate, will be materially higher than the expenses incurred by the UIT. This promotional material will be in addition to the disclosure documents required by the Securities Act of 1933 and the 1940 Act. Also, these and other material differences between the New Fund and the UIT will be prominently disclosed in the New Fund's prospectus included in the Trust's registration statement relating to the Exchange Offer.

2. The Adviser will reduce or waive its fee in order to limit total expenses of the New Fund (exclusive of interest, taxes, brokerage items, 12b–1 plan payments and extraordinary expenses) during the first six months of its operations to the lower of (i) 1.25% annually of the monthly average net assets of the New Fund or (ii) 10 basis points below the lowest expense limitation imposed in any jurisdiction in which the New Fund is making sales of its shares or has qualified its shares for sale.

3. Tucker Anthony will not, jointly with the other sponsors, exercise its discretion to terminate the UIT unless the net asset value of the UIT is reduced below $20 million or unless it is required pursuant to its legal obligations as managing sponsor of the UIT to recommend such action as being in the best interests of unitholders. In addition, prior to recommending discretionary termination of the UIT to the other sponsors, Tucker Anthony will waive its managing sponsor's fee and take such other actions within its control to maintain the level of the UIT's expenses at an economically viable level.

4. Applicants will comply with the provisions of proposed Rule 11c–1 under the 1940 Act.

5. Concerning operation of the general exchange privilege for which an amended order is requested, in the event that Freedom Money Market Fund adopts a plan of distribution under Rule 12b–1 under the 1940 Act, the time during which shares of Freedom Money Market Fund that are received in an exchange effected in reliance upon the Prior Orders are held by the exchanging shareholder will be included in determining whether the CDSL will be imposed upon a redemption of either such shares of shares received in a subsequent exchange effected in reliance upon the Prior Orders.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6856 Filed 3–28–88; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 79-17; Notice 38]

New Car Assessment Program; Deformable Moving Barrier Crash Test Results and Analysis

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for Comments on NHTSA's Deformable Moving Barrier (DMB) Tests.

SUMMARY: This notice announces the availability of crash test reports, test films, and a technical report for nine frontal DMB crash tests conducted at 35 mph as a part of the New Car Assessment Program (NCAP). The DMB tests were designed to explore the mass effect and stiffness characteristics of different size and weight vehicles in multi-vehicle frontal accidents, and to examine the feasibility of using a DMB as a surrogate vehicle in vehicle-to-vehicle crash tests that can produce repeatable test results. The 3,000-pound DMB used in this test series was developed to illustrate the DMB tests concept and should not be considered a final test structure. The DMB tests were conducted using the NCAP test procedures and dummy injury measures. The technical report concludes that the DMB tests appear to reflect the effects of vehicle mass differences and structural crashworthiness on dummy injury measures, based on the statistical relationship demonstrated between vehicle weight and the NCAP injury measures for the head and chest. As a result, it appears that the DMB concept offers the potential for providing consumers with comparative test data on vehicles of different size and weight.

However, before additional DMB developmental activities are undertaken, the agency is interested in obtaining comments on the results of the work already completed. While all views and opinions are invited, the agency is particularly interested in obtaining data which would assist it in evaluating the DMB concept as a means of comparing the crashworthiness of vehicles of different size and weight. The agency seeks written comments on the DMB technical report and its conclusions, on the barrier used in the tests and its repeatability, and on other test data and analyses where a DMB was used in frontal crash tests.

DATE: Written comments on this notice must be submitted no later than May 31, 1988.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and can be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: John M. Machey, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4798).

SUPPLEMENTARY INFORMATION: In November 15, 1984, press release, the agency announced the experimental testing of some 1985 model vehicles in a frontal collision with a DMB to better assess the role of vehicle weight and structure in occupant crash protecting. These DMB tests were conducted as part of the agency's continuing effort to provide more useful crashworthiness information to consumers and to insure that the information presented was not misinterpreted for vehicles of different size and weight. There are many instances in which consumers have misinterpreted NCAP data by mistakenly assuming that small, light vehicles are more crashworthy than large, heavy vehicles based solely on lower injury numbers listed in NHTSA's press releases. However, real-world crash data indicate that the relative risk of fatality in multi-vehicle crashes decreases as vehicle mass increases. The DMB program was initiated to examine the effect of vehicle mass, structure, and resultant dalta V on occupant injury levels. The program was purely experimental and designed to test the concept of frontal DMB testing. The program consisted of head-on impacts between two moving vehicles, a DMB and a model year 1985 vehicle, each moving at 35 miles per hour (mph), a closing velocity of 70 mph. The mass of the DMB was 3,000 pounds and the mass of the nine vehicles involved in the program varied from 2,020 to 3,750 pounds.

The DMB test data and the NCAP test data of indentical vehicles were analyzed to examine the relationships that may exist between the two crash test modes and to compare the test results with real-world crash data.

The DMB technical report reached three conclusions: (1) Statistical analyses demonstrated a weak relationship between test vehicle weight and dummy injury measures; (2) The DMB concept appears to assess the effects of vehicle mass differences and structural crashworthiness; and (3) The DMB appears to offer a repeatable structure for use as a surrogate vehicle in vehicle-to-vehicle crash tests.

This initial experimental DMB program was undertaken to explore the reasonableness of the DMB concept for assessing comparative crashworthiness for vehicles of different size and weight. Therefore, this series of tests is not intended to provide conclusive results on all aspects of a DMB test configuration. Issues concerning the details of the design of the DMB energy-absorbing face, its impact speed, its mass, etc., would need to be addressed in future testing programs if the concept is pursued as a means of examining comparative crashworthiness information on vehicles both within and among vehicle size and weight classes. These two types of comparisons cannot be made in the agency's NCAP tests, where the frontal collision into a fixed rigid barrier represents a head-on collision between two identical vehicles. The agency emphasizes that the DMB tests are experimental and that too little data are available to determine the feasibility of the DMB test configuration in the current or future structure of NCAP.

The agency seeks written comments on the DMB technical report and its conclusions. Comments on the DMB concept, as well as the design of such a barrier and its repeatability, are especially solicited. The DMB test reports, test films, and technical report are available for review in the NHTSA Docket Section, at the above address, under Docket Number 79-17-GR.

The agency also seeks information on other test data and analyses where a DMB was used in frontal crash tests. In particular, the agency is interested in obtaining comments on the information submitted to the agency by General Motors Corporation (GM) on April 16, 1985, concerning their activities in developing an energy absorbing frontal moving barrier as an alternative to the fixed rigid barrier currently used in NCAP. Copies of the GM material are available for review in the NHTSA Docket Section, at the above address, under Docket Number 79-17-GR, item number 047.

Interested persons are invited to submit comments on the experimental DMB test program results and analyses. It is requested but not required that 10 copies of comments be submitted. A 60-

day comment period is provided. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 7 copies, from which the purportedly confidential information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be accepted, and will be available for examination in the docket at the above address both before and after that date. The agency will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments in the public docket should enclose in the envelope with their comments, a self-addressed, stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on March 24, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-6766 Filed 3-28-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Commercial Operations Advisory Committee

AGENCY: Departmental Offices, Treasury.

ACTION: Announcement of advisory committee and solicitation of committee members.

SUMMARY: In accordance with section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), and the Federal Advisory Committee Act, the Department of the Treasury has established an Advisory Committee on Commercial Operations of the United States Customs Service. This notice is to inform members of the public of the establishment of this Committee, provide information on its objective, solicit interested members of the public to serve as members of the Advisory Committee and outline the procedures to follow in making application for membership.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary (Enforcement), Office of Trade and Tariff Affairs, (202) 566-8435.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), established an Advisory Committee on Commercial Operations of the United States Customs Service. At the same time, it repealed the statutory mandate for a Customs User Fee Advisory Committee which had been established by the Consolidated Omnibus Budget Reconciliation Act of 1985. The new Committee's mandate has been expanded to cover all matters involving the commercial operations of the U.S. Customs Service. This area of interest is much larger than that of the previous Committee, which was limited to issues relating to services performed by Customs for which a fee or charge was assessed.

Objectives, Scope and Description of Committee

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is anticipated that the Committee will consider such issues as the time periods during which Customs commercial operations services should be performed; the proper number and deployment of Customs officers necessary to provide adequate and expeditious service; existing, new, or proposed commercial operations programs; and user fees or other charges for services provided by Customs.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement. The Committee will function for a 2-year period before renewal or abolishment and will meet no more than 12 times during that period. The Committee will consist of 20 members (not including the Chairman), selected by the Secretary of the Treasury from representatives of the trade or transportation community served by Customs, the general public, or others who are directly affected by the Customs commercial operations. In addition, members shall represent major regions of the country and no political party may be in the majority. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purposes. Travel and per diem are authorized as necessary.

Application for Advisory Committee Apppointment

Any interested person wishing to serve on the Advisory Committee on Commercial Operations of the United States Customs Service must provide the following:

—Statement of interest and reasons for application;
—Complete biographical information; and
—Political affiliation.

In addition, applicants must agree to submit to preappointment and annual security and tax checks.

The application period for interested candidates will extend to May 31, 1988. Applications should be submitted to the Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Department of Treasury, 1500 Pennsylvania Ave., NW., Room 4004, Washington, DC 20220.

Date: March 24, 1988.

Francis A. Keating, II,

Assistant Secretary of Treasury (Enforcement).

[FR Doc. 88-6818 Filed 3-28-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

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

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 9171, March 21, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, March 25, 1988.

CHANGES IN THE MEETING: Determination by the Board to *close* the following previously announced open item(s):

Proposed funding and commissioning of portraits of former Board chairmen.

CONTACT PERSON FOR MORE INFORMATION: MR. JOSEPH R. COYNE, ASSISTANT TO THE BOARD; (202) 452-3204.

Date: March 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6927 Filed 3-25-88; 2:20 pm]

BILLING CODE 6210-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 23, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: March 30, 1988, 12:00 p.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC. 20426

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing for all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 874th Meeting—March 30, 1988, Regular Meeting (12:00 p.m.)

CAP-1.
Project No. 5146-004, The City of Allentown, Pennsylvania

CAP-2.
Project No. 1417-004, The Central Nebraska Public Power and Irrigation District
Project No. 1835-016, Nebraska Public Power District

CAP-3.
Project No. 9838-002, Catalyst Energy Development Corporation

CAP-4.
Project No. 9812-001, Clifton Corporation
Project No. 9977-012, City of Augusta, Georgia

CAP-5.
Project No. 3194-007, Joseph Martin Keating

CAP-6.
Project No. 7163-003, Lynchburg Hydro Associates

CAP-7.
Project No. 2756-007, City of Burlington Electric Department
Project No. 3101-002, City of Winooski
Project No. 9413-003, Winooski One Partnership

CAP-8.
Project Nos. 6727-003 and 008, Northwest Power Company, Inc.

CAP-9.
Docket Nos. UL87-3-001 and UL87-9-001, Fairfax County Water Authority

CAP-10.
Project Nos. 10405-001 and 002, Craig W. Scott

CAP-11.
Project No. 8193-002, William F. Munch

CAP-12.
Project No. 8875-001, Armstrong-Keta, Inc.

CAP-13.
Project No. 6944-002, Douglas Water Power Company
Project No. 10406-000, Craig W. Scott

CAP-14.
Project Nos. 4685-003 and 10470-001, Long Lake Energy Corporation
Project No. 2474-001, Niagara Mohawk Power Corporation

CAP-15
Project No. 9086-000, Northwest Power Company

CAP-16.
Docket No. ER88-77-000, Duke Power Company

CAP-17.
Docket No. ER88-224-000, Carolina Power & Light Company

CAP-18.
Docket No. ER83-657-001, Houston Lighting & Power Company

CAP-19.
Docket Nos. ER84-604-000 and ER85-477-002, Southwestern Public Service Company

CAP-20.
Docket No. EL87-45-001, The Cities of Marshall, Blue Earth, Mountain Lake, St. James, and Sauk Centre, Minneosta and Hillsboro, North Dakota v. Northern States Power Company-Minnesota

CAP-21.
Docket No. ER87-488-002, Consolidated Edison Company of New York, Inc.

CAP-22.
Docket No. ER88-209-001, Metropolitan Edison Company and Pennsylvania Electric Company

CAP-23.
Docket No. QF87-616-001, J. W. Gathering Company

CAP-24.
Docket Nos. ER82-553-002, 003, ER82-554-002 and 003, Ohio Power Company

CAP-25.
Docket Nos. ER86-368-017, ER86-368-005, ER86-638-001, ER86-638-002 and ER86-709-002, El Paso Electric Company

CAP-26.
Docket No. ER88-81-001, West Texas Utilities Company

CAP-27.
Docket Nos. QF86-1025-002, QF86-1026-002, QF86-1027-002, QF86-1028-002, QF86-1029-003, QF86-1030-002, QF86-1031-002, QF86-1032-003 and QF86-1033-002, Turbo Power Systems

CAP-28.
Docket No. E-7777 (Phase II), Project Nos. 2735-001, 1988-003 and 233-006, Pacific Gas & Electric Company

CAP-29.
Docket No. ER88-172-000, Pennsylvania Power & Light Company

CAP-30.
Docket No. EC88-1-000, Duke Power Company and Nantahala Power and Light Company

CAP-31.
Docket No. EL86-43-000, City of Gallup, New Mexico v. Public Service Company of New Mexico

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM87-35-001, Generic Determination of Rate of Return on Common Equity for Public Utilities

CAM-2.
Docket No. RM87-26-000, Filing Fees Under The Independent Offices Appropriations Act of 1952

CAM-3.
Docket No. RM87-25-000, Regulations Delegating Authority

CAM-4.
Docket No. RM88-10-000, Revision of Definition For Natural Gas Projected From Devonian Shale

CAM-5.
Docket No. RM87-17-000, Natural Gas Data Collection System

CAM-6.
Docket No. RM87-16-001, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts

CAM-7.
Docket No. GP87-32-000, Oklahoma Corporation Commission, Section 102(c)

NGPA Determination, Fox No. 1 Well, FERC No. JD86-30785
CAM-8.
Docket No. GP87-23-000, Royal Resources Exploration, Inc. v. Pacific Gas and Electric Company
CAM-9.
Docket No. GP-11-001, ANR Pipeline Company v. Conoco, Inc.
CAM-10.
Docket No. SA80-40-007, RJB Gas Pipeline Company
CAM-11.
Docket No. RO87-11-000, National Distillers and Chemical Corporation

Consent Gas Agenda

CAG-1.
Docket No. RP88-69-000, Stringray Pipeline Company
CAG-2.
Docket No. RP88-67-000, Texas Eastern Transmission Corporation
CAG-3.
Docket Nos. RP86-63-009 and RP86-114-004, Southern Natural Gas Company
CAG-4.
Docket No. RP88-66-000, Pacific Interstate Offshore Company
CAG-5.
Docket No. RP88-17-004, Southern Natural Gas Company
CAG-6.
Docket No. RP88-71-000, El Paso Natural Gas Company
CAG-7.
Docket No. RP84-53-007 and 009, Ozark Gas Transmission System
CAG-8.
Omitted
CAG-9.
Docket No. RP88-68-000, Transcontinental Gas Pipe Line Corporation
CAG-10.
Docket No. RP88-2-000, Natural Gas Pipeline Company of America
CAG-11.
Docket No. TA88-6-5-000, Midwestern Gas Transmission Company
CAG-12.
Docket No. TA88-4-42-000, Transwestern Pipeline Company
CAG-13.
Docket Nos. TA88-4-37-000 and 001, Northwest Pipeline Corporation
CAG-14.
Omitted
CAG-15.
Docket No. TA88-3-33-000, El Paso Natural Gas Company
CAG-16.
Docket No. TA88-3-7-000, Southern Natural Gas Company
CAG-17.
Docket No. TA88-2-31-000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-18.
Docket No. TA88-2-38-000, Ringwood Gathering Company
CAG-19.
Docket No. TA87-4-49-006, Williston Basin Interstate Pipeline Company
CAG-20.
Docket No. TA87-1-37-013, Northwest Pipeline Corporation
CAG-21.
Docket Nos. RP86-119-000, TA84-2-9-007 and TA85-1-9-004, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG-22.
Docket No. RP88-43-001, Columbia Gas Transmission Corporation
CAG-23.
Docket Nos. RP82-55-036 and RP87-7-029, Transcontinental Gas Pipe Line Corporation
CAG-24.
Docket No. RP88-47-001, Northwest Pipeline Corporation
CAG-25.
Docket Nos. RP88-10-004 and RP85-169-033, Consolidated Gas Transmission Corporation
CAG-26.
Docket No. CP87-393-002, Southern Natural Gas Company
CAG-27.
Docket Nos. TA87-2-2-002 and TA88-1-2-000, East Tennessee Natural Gas Company
CAG-28.
Docket Nos. RP88-45-002 and RP88-46-001, Arkla Energy Resources, A Division of Arkla, Inc.
CAG-29.
Docket No. RP85-125-007, Distrigas Corporation
Docket No. TA88-1-12-001, Distrigas of Massachusetts Corporation
CAG-30.
Docket No. IS88-13-000, Point Arguello Pipeline Company
CAG-31.
Omitted
CAG-32.
Docket Nos. TA85-1-33-004, TA84-1-33-011 and TA84-2-33-013, El Paso Natural Gas Company
CAG-33.
Docket No. RP85-178-024, *et al.*, Tennessee Gas Pipeline Company
CAG-34.
Docket Nos. RP88-27-002 and RP85-209-012, United Gas Pipe Line Company
CAG-35.
Docket No. RP86-170-000, Mississippi River Transmission Corporation
CAG-36.
Docket No. RP87-24-000, U-T Offshore System
CAG-37.
Docket No. RP86-85-000, Texas Gas Transmission Corporation
CAG-38.
Docket No. RP87-78-000, Penn-York Energy Corporation
CAG-39.
Docket No. RP87-70-000, East Tennessee Natural Gas Company
CAG-40.
Docket No. RP86-35-000, *et al.*, Great Lakes Gas Transmission Company
CAG-41.
Docket No. CI84-10-007, Felmont Oil Corporation and Essex Offshore Inc.
CAG-42.
Docket No. CI85-513-008, Tenngasco Gas Supply Company, *et al.*, v. Southland Royalty Company, *et al.*
CAG-43.
Docket No. CI86-168-004, Tenngasco Corporation and Tenngasco Exchange Corporation
Docket No. CI85-673-004, UER Marketing Company
Docket No. CI86-7-004, Seagull Marketing Services Inc.
Docket No. CI86-27-005, Transco Energy Marketing Company
Docket Nos. CI86-377-001 and CI86-378-001, Arkla Energy Marketing Company
Docket No. CI86-413-002, ANR Gathering Company
Docket No. CI86-419-002, ANR Supply Company
Docket No. CI86-421-002, Coastal States Industrial Sales Company (formerly Texcol Industrial Sales Company)
Docket No. CI86-503-002, Sonat Marketing Company (formerly SNG Trading Inc.)
Docket No. CI87-295-001, Gulf Energy Marketing Company
Docket No. CI87-307-001, MidCon Marketing Corporation
Docket No. CI87-476-001, TXG Gas Marketing Company
Docket No. CI87-547-001, Enron Gas Marketing, Inc.
Docket No. CI87-621-001, Mountain Industrial Gas Company
Docket No. CI87-734-001, Northwest Marketing Company
Docket No. CI87-738-002, Williams Gas Marketing Company
Docket No. CI87-786-001, Val Gas, L. P.
Docket No. CI87-825-001, V.H.C. Gas Systems, L.P.
Docket No. CI87-847-001, Texas Eastern Gas Services Company
Docket No. CI87-883-001, Meridian Oil Trading Inc.
Docket No. CI88-1-001, CSX NGL Corporation
Docket No. CI88-74-001, Panhandle Trading Company
Docket No. CI88-274-000, Coastal States Gas Transmission Company
Docket No. CI88-328-000, Ringwood Marketing Company
Docket No. CI88-346-000, Cabot Energy Marketing Corporation
CAG-44.
Docket No. CI87-433-001, Texaco Gas Marketing Inc.
Docket No. CI87-729-001, Phillips Gas Marketing Company
Docket No. CI87-747-001, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
Docket No. CI87-785-001, Phillips 66 Natural Gas Company
Docket No. CI87-324-001, Natural Gas Clearinghouse Inc.
Docket No. CI87-353-001, Kenrell Petroleum Resources, Inc.
Docket No. CI87-481-001, Colony Natural Gas Corporation
Docket No. CI87-581-001, Prior Energy Corporation
Docket No. CI87-806-001, Shell Gas Trading Company
Docket No. CI88-53-001, LOUTEX Energy Inc.

Docket No. CI87-751-001, Pennzoil Gas Marketing Company
Docket No. CI88-30-001, Brandywine Industrial Gas Inc.
Docket No. CI86-255-001, Hadson Gas Systems, Inc.
Docket No. CI87-89-002, EnTrade Corporation
Docket No. CI87-396-001, Tejas Power Corporation
Docket No. CI87-702-002, Kogas, Inc.
Docket No. CI87-854-001, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI87-429-001, Vesta Energy Company
Docket No. CI87-578-001, Continental Natural Gas, Inc.
Docket No. CI87-910-001, Catamount Natural Gas, Inc.
Docket No. CI87-497-001, Reliance Gas Marketing Company
Docket No. CI87-254-002, Salmon Resources, Ltd.
Docket No. CI87-498-001, PSI, Inc. (formerly People-Service, Inc.)
Docket No. CI87-764-001, BHP Gas Marketing Company
Docket No. CI88-70-001, Richardson Products Company
Docket No. CI88-95-001, Houston Gas Exchange Corporation
Docket No. CI87-386-001, American Central Gas Pipeline Company
Docket No. CI87-736-001, Chevron Natural Gas Services, Inc.
Docket No. CI87-889-001, Associated Natural Gas, Inc.
Docket No. CI88-17-001, Tejas Hydrocarbons Company
Docket No. CI87-648-001, Victoria Gas Corporation
Docket No. CI86-26-006, Access Energy Corporation
Docket No. CI87-559-001, The Resource Group
Docket No. CI87-700-001, Nagasco Marketing, Inc.
Docket No. CI87-826-001, Standard Gas Marketing Company
Docket No. CI86-267-001, Howell Gas Management Company
Docket No. CI87-703-001, Western Kentucky Gas Resources Company d/b/a NRG Corporation
Docket No. CI86-56-003, Citizens Energy Corporation and Citizens Gas Supply Corporation
Docket No. CI87-809-001, Amalgamated Pipeline Company
Docket No. CI88-145-000, Anadarko Trading Company
Docket No. CI88-162-000, Grand Valley Gas Company
Docket No. CI88-188-000, GasMark, Inc.
Docket No. CI88-291-000, Sun Gas Transmission Limited Partnership, Sun Gas Transmission Company, Inc. and Sun Gas Marketing
Docket No. CI88-304-000, Parker Gas Transmission, Inc.
Docket No. CI88-306-000, Golden Natural Gas Company
Docket No. CI88-307-000, Mobil Natural Gas Inc.
Docket No. CI88-308-000, Corpus Christi Gas Marketing, Inc. and Corpus Christi Gas Gathering, Inc.

CAG-45.
Docket No. CI86-641-002, Northwest Pipeline Corporation and Northwest Marketing Company

CAG-46.
Docket No. RI87-2-000, Plains Petroleum Company and Plains Petroleum Operating Company
Docket No. RP87-49-000, KN Energy, Inc.

CAG-47.
Docket No. CP86-492-001, Moraine Pipeline Company
Docket No. CP86-494-001, Moraine Pipeline Company
Docket No. CP86-493-001, Natural Gas Pipeline Company of America

CAG-48.
Docket No. CP86-337-003, Algonquin Gas Transmission Company

CAG-49.
Docket No. CP85-621-007, ANR Pipeline Company

CAG-50.
Docket No. CP85-183-004, Transcontinental Gas Pipe Line Corporatioin

CAG-51.
Docket No. CP87-474-001, Great Lakes Gas Transmission Company

CAG-52.
Docket Nos. CP83-254-295, CP83-335-210, CP83-254-296 and CP83-335-211, Williston Basin Interstate Pipeline Company

CAG-53.
Docket No. CP87-112-001, Transwestern Pipeline Company and H. L. Brown, Jr.

CAG-54.
Docket No. CP87-14-001, Natural Gas Pipeline Company of America

CAG-55.
Docket No. CP87-122-002, Williston Basin Interstate Pipeline Company

CAG-56.
Docket No. CP88-17-001, Natural Gas Pipeline Company of America

CAG-57.
Docket No. RP86-14-017, Columbia Gulf Transmission Company
Docket No. RP86-15-017, Columbia Gas Transmission Corporation

CAG-58.
Docket No. CP86-627-000, Tri-Energy Pipeline Company

CAG-59.
Docket No. CP77-216-009, Distrigas of Massachusetts Corporation
Docket No. CP77-217-001, Distrigas Corporation

CAG-60.
Docket No. CP86-732-000, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

CAG-61.
Docket No. CP68-187-000, Trunkline Gas Company

CAG-62.
Docket No. CP83-211-001, Columbia Gulf Transmission Company

CAG-63.
Docket No. CP87-441-000, Trunkline Gas Company

CAG-64.
Omitted

CAG-65.
Docket No. CP86-360-002, Northern Natural Gas Company, Division of Enron Corporation

CAG-66.
Docket No. CP87-405-000, Philips Petroleum Company

CAG-67.
Docket No. CP88-98-000, Shell Western E&P Inc.

CAG-68.
Docket No. CP88-83-000, Texas Eastern Transmission Corporation

CAG-69.
Docket No. CP88-8-000, Volkswagen of America, Inc.

I. Licensed Project Matters

P-1. Reserved

II. Electric Rate Matters

ER-1.
Docket No. EL86-53-001, Southern Company Services, Inc.
Docket No. EL86-57-001, Gulf States Utilities Company v. Southern Company Services, Inc., *et al.* Order concerning unit power sales agreement and interchange contract.

ER-2.
Docket No. ER88-219-000, Pacific Gas and Electric Company. Order concerning rate change application.

ER-3.
Docket No. EF87-2011-001, United States Department of Energy—Bonneville Power Administration. Order concerning long-term power rates.

Miscellaneous

M-1.
Reserved

M-2.
Reserved

M-3.
(A) Docket No. RM88-13-000, Brokering of Interstate Pipeline Capacity

M-3.
(B) Docket Nos. RP86-105-000, RP86-169-000, 027 and CP86-485-000, ANR Pipeline Company
Docket Nos. RP86-15-018 thru 029 and 033, Columbia Gas Transmission Corporation
Docket No. RP86-168-000, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Corporation
Docket Nos. RP86-14-018 thru 029 and 033, Columbia Gulf Transmission Company
Docket No. RP85-169-027, Consolidated Gas Transmission Corporation
Docket Nos. RP86-45-000, 002 thru 015, El Paso Natural Gas Company
Docket Nos. CP86-582-002, 004 thru 013 and 015, Natural Gas Pipeline Company
Docket Nos. CP86-395-000, 001, 003, 007 thru 010, Northern Border Pipeline Company
Docket Nos. RP85-206-011 thru 027, Northern Natural Gas Company
Docket No. CP86-578-000, Northwest Pipeline Corporation
Docket Nos. RP87-103-000, 001 and 002, Panhandle Eastern Pipeline Company
Docket No. RP87-47-000, Phillips Gas Pipeline Company

Docket No. RP88-17-000, Southern Natural Gas Company
Docket No. RP88-29-000, Tarpon Transmission Company
Docket Nos. CP68-245-001, CP75-23-027 CP75-120-020 and RP87-26-010, Tennessee Gas Pipeline Company
Docket Nos. RP85-177-019 thru 042, Texas Eastern Transmission Corporation
Docket Nos. RP88-5-000, 002 and RP88-37-000, Transcontinental Gas Pipeline Company
Docket Nos. RP85-175-008 thru 012, Transwestern Pipeline Company
Docket Nos. CP86-426-000, CP86-552-001, CP86-586-004, CP87-334-001, CP87-457-001, 002, RP86-115-011, 012 and RP87-15-020, Trunkline Gas Company
Docket Nos. CP79-22-004, CP88-9-000, CP88-196-000, CP88-210-000, RP88-5-000, RP88-8-000, 002 and RP88-37-000, United Gas Pipe Line Company Order on pending filings seeking or advocating authority to broker capacity in interstate pipelines.

M-3.

(C) Docket No. CP86-250-002, Ozark Gas Transmission System. Order on request for rehearing of an order issuing a Part 284 blanket transportation certificate

(D) Docket No. CP86-720-001 through 003, Trailblazer Pipeline Company. Order on requests for rehearing of an order issuing a Part 284 blanket transportation certificate.

M-4.

Docket No. RM88-14-000, Implementation of Section 5 of the Outer Continental Shelf Lands Act

M-5.

Docket No. GP83-34-000, Westar Transmission Company, A Division of Pioneer Corporation. Petition for a declaratory order concerning National Gas Act Jurisdiction.

I. Pipeline Rate Matters

RP-1.

Omitted

RP-2.

Docket No. RP83-58-001, Southern Natural Gas Company. Order on initial decision on cost classification, allocation rate design of sales rates, and allocation of Account 858 and storage costs to transportation rates.

II Producer Matters

CI-1.

Reserved

III Pipeline Certificate Matters

CP-1.

Docket Nos. CP81-482-004, CP84-49-001, CP85-586-000, CP86-396-001, CP86-536-000, CP86-537-000, CP86-647-000, 001, CP86-662-000, CP86-736-000, CP86-741-000, CP87-47-000, CP87-71-000, CP87-81-000, CP87-87-000 and CP87-130-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket Nos. CP84-668-002, CP87-324-000, CP87-325-000, CP87-404-000, CP87-538-000, and CP86-713-000, Northern Natural Gas Company, Division of Enron Corporation
Docket Nos. CP86-136-010, CP86-438-002, CP86-542-000, CP86-728-000, CP87-412-000 and CP88-20-000, Natural Gas Pipeline Company of America
Docket Nos. CP88-39-000, CP88-41-000, CP88-49-000, Northern Border Pipeline Company
Docket No. CP87-212-000, Panhandle Eastern Pipe Line Company
Docket Nos. CP82-211-003, CP86-385-000 and CP87-397-000, Panhandle Eastern Pipe Line Company and Trunkline Gas Company
Docket No. CP83-364-002, Columbia Gas Transmission Corporation
Docket No. CP86-502-000, MIGC, Inc.
Docket No. CP87-27-000 and CP87-518-000, Trunkline Gas Company. Order on requests by interstate pipelines holding Part 284 blanket transportation certificates for individual transaction NGA section 7(c) transportation certificates.

Lois D. Cashell,

Acting Secretary

[FR Doc. 88-6853 Filed 3-24-88; 4:30 pm]

BILLING CODE 6717-01-M

Corrections

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

Correction

In notice document 88-5023 beginning on page 7383 in the issue of Tuesday, March 8, 1988, make the following correction:

On page 7383, in the third column, in the table, under "Countervailing duty proceeding", in the second entry, "Cargon" should read "Carbon".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA No.: 84.042]

Notice Inviting Applications for New Awards Under the Student Support Services Program for Fiscal Year 1988

Correction

In notice document 88-6367 appearing on page 9472 in the issue of Wednesday, March 23, 1988, make the following correction:

In the third column, the date on the fifth line should read "March 30, 1988"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No., 87-NM-109-AD; Amdt. 39-5813]

Airworthiness Directives; Boeing Model 737 Series Airplanes

Correction

In rule document 88-4547 beginning on page 6794 in the issue of Thursday, March 3, 1988, make the following corrections:

§ 39.13 [Corrected]

On page 6795, in the second column, in § 39.13, paragraph E., in the sixth line, begin a new paragraph with "Boeing Supplemental"; and in the last line "552(a)(10)" should read "552(a)(1)"

BILLING CODE 1505-01-D

Federal Register

Tuesday
March 29, 1988

Part II

Department of the Interior

National Park Service

National Registry of Natural Landmarks; Annual Supplemental Listing of Natural Landmarks; Notice

DEPARTMENT 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, 1986, and September 30, 1987, 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. The listing published in the **Federal Register** on March 4, 1987 (52 FR 6686) contains all natural landmarks designated between October 1, 1985 and September 30, 1986. 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, National Park Service, P.O. Box 37127, Washington, DC 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 October 30, 1987 there were 586 sites listed on the National Registry of Natural Landmarks. The National Natural Landmarks program is administered by the National Park Service.

Natural landmarks 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 586 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, 1986, and October 30, 1987. 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: February 12, 1988.

Denis P. Galvin,

Acting Director, National Park Service

Alabama

Jefferson County

Red Mountain Expressway Cut—This 23-acre site, located along the road cut where U.S. Highway 280 traverses Red Mountain in Birmingham, exhibits an unusual combination of stratigraphic and structural features that record the geological development of this part of the Southern Appalachian fold belt during Paleozoic time. In one location, rocks representing a 150 million-year geological record are exposed along a distance of only about 650 feet, because the strata are tilted. Structural features clearly displayed include unconformities and normal faults. Sedimentary strata represent a range of depositional environments, from intertidal beach and mud flat to offshore, open marine conditions. In addition, the rocks exposed contain a rare Silurian trilobite species. Excellent public interpretation of this site is provided by the Red Mountain Museum. (November 1987) Owner: State

California

Solano County

Dixon Vernal Pools—This 15,200 acre site, located approximately 15 miles south of Dixon, represents the best example of the Valley Needlegrass Grassland in the Great Central Valley of the South Pacific Border Natural Region. There are only three sites of Valley Needlegrass Grassland remaining today. The site contains extensive stands of perennial needlegrasses in a mosiac with claypan vernal pools, another critically rare natural community. The rolling, hummocky topography results in a complex patchwork of grasses and

native wildflowers. (May 1987) Owner: Private

Florida

Highlands County

Archibold Biological Station—This 4,250-acre site, located approximately 7 miles south of Lake Placid, encompasses the largest known tract of contiguous natural communities characteristics of the Lake Wales Ridge still in a relatively natural condition. The full range of moisture conditions (xeric-mesic-hydric-aquatic), and most stages of plant succession, are represented by high quality examples. Lake Annie is the highest quality water supply left in the system of valley sink lakes that extends northward from the Station. A large number of endemic and rare species of plants and animals are located here. (May 1987) Owner: Private

Illinois

Cook County

* Markham Prairie—Located in the town of Markham about 20 miles south of the Loop is a 190-acre site representing the largest and highest quality prairie in Illinois and in large parts of adjacent states. As a mesic prairie intergrading between sand prairie and typical tall-grass prairie on loamy soil, it is a remnant of a distinct and formerly widespread biotic community type of the Central Lowlands Natural Region. Mesic prairie has been nearly eliminated along the south edge of Lake Michigan where most remnants occur. In the Chicago Lake Plain of Illinois, for example, only about one-hundredth of one percent remain of the original prairie. Much of it occurs within a nature preserve, located close to a very large metropolitan area, surrounded by suburban development. The site is also an excellent example of undeveloped lakebed and beach ridge topography. (November 1987) Owner: Private

Iowa

Winnesheik County

Cold Water Cave—Located in the glaciated portion of the upper Midwest, where caves are rare and cave formations (speleothems) are generally minor, Cold Water Cave is exceptional as an extensive cave system that is well decorated with speleothems. It contains numerous vertical shafts and an unusually large, active, meandering underground stream that courses along most of the approximately 7.3 miles of cave passageways. Because the cave is locked and not accessible to the general public, it remains in unimpaired natural condition. Having formed probably within the last 200,000 years in a limestone formation of Ordovician age, the cave system is also relatively young in geologic terms, and appears to be enlarging more rapidly than most caves in the United States. The cave atmosphere is also unusual for its typically low oxygen content and extremely high carbon dioxide content. (November 1987) Owner: Private

Kentucky

Russell County

Creelsboro Natural Bridge—This 8.2-acre site, located 14 miles southwest of Jamestown, is the longest natural bridge, or natural tunnel, in the Highland Rim Section of the Interior Low Plateaus Natural Region. Whereas most of the natural bridges and arches of Kentucky are formed in sandstone or conglomerate, Creelsboro Natural Bridge is composed of limestone of Ordovician age. The occasional diversion of Jim Creek through the tunnel into the adjacent Cumberland River during high water is an outstanding illustration of subterranean stream diversion, a process by which the bridge formed and which continues today. In addition, the occasional reverse flow of the Cumberland River flood waters back through the tunnel into the Jim Creek valley is highly unusual. The bridge spans 75 feet over a tunnel 100 feet long, with a height of 15 feet on the upstream side and about 40 feet on the downstream side. (November 1987) Owner: Private

Massachusetts

Berkshire County

*Mt. Greylock Old Growth Spruce—This 21.3-acre site contains three separate stands (9.4, 5.7, and 6.2 acres) of undisturbed old growth red spruce on the northwest slopes of Mt. Greylock, the highest mountain in Massachusetts. These stands have been undisturbed for at least 150–180 years, and may be virgin. No other old growth red spruce stands are known in Southern New England, while only a few comparable or better sites occur in Northern New England. (November 1987) Owner: State

Nebraska

Lincoln County

*Dissected Loess Plains—Located 17 miles south-southwest of Brady, loess (wind blown silt) deposits at this site are among the thickest (200+ feet) in the Great Plains Natural Region and in North America. Eroded canyons and deep valleys that occur here reveal the geological history of the Loess Plains better than any other place in the Great Plains. It has been well studied by geologists and described in the scientific literature, and also contains good examples of native vegetation. This 26,880-acre site is located near the Nebraska Sand Hills, the origin of much of the loess found in the Loess Plains. The 10,420-acre Loess Hills National Natural Landmark, in Monona and Harrison Counties, Iowa, complements this site as an exceptional illustration of constructional topography, in contrast to the erosional topography found here. (November 1987) Owner: Private

New Hampshire

Cheshire County

*Mount Monadnock—This 4,578-acre site, located within the towns of Jaffrey and Dublin about 80 miles northwest of Boston, is the type locality of a monadnock, or isolated mountain remnant. In addition, the mountain exhibits the conspicuous effects of Pleistocene glacial erosion, including striations, roche moutonnees or whalebacks, and an oversteepened profile resulting from glacial plucking. (May 1987) Owner: State Private

Grafton and Carroll Counties

*Nancy Brook Virgin Spruce Forest and Scenic Area—This 1,590-acre site, located approximately 6 miles northwest of Barlett, is probably the largest virgin montane spruce forest in New England. Additionally, the diversity of the landscape is enhanced by landslides, steep valley walls, waterfalls, boulder streams, ponds, beaver clearings, mountain slopes, ridges, summits and distant views. (May 1987) Owner: Federal

Oregon

Benton County

Williamette Floodplain—This 682-acre site, located approximately 15 miles south of Corvallis, represents the largest remaining native unplowed example of bottomland interior valley grassland in the North Pacific Border Natural Region. All of these grasslands and shrubland communities have become exceedingly rare as most have been cultivated or converted to pastureland. (May 1987) Owner: Federal

Virginia

Orange County

Montpelier Forest—This 200-acre site is located within Montpelier, the estate of President James Madison, approximately five miles southwest of Orange on both sides of State Route 20. This site represents the best example of

old growth Eastern deciduous the Virginia-Maryland portion of the Piedmont Natural Region in terms of age and lack of human disturbance. The forest is composed of mainly oak, hickory, and poplar, many of which are believed to be between 200 and 300 years old. The site is high in natural diversity and possesses an extraordinarily high value to science and education. (November 1987) Owner: Private

Wisconsin

Dane County

*Cave of the Mounds—Located approximately 2 miles east of Blue Mounds State Park and directly below Brigham Farms, this cave provides an exceptional illustration of two principal modes of limestone cave formations (speleogenesis): the solution of cave passageways by "vadose" water flowing above and also by "phreatic" groundwater flowing below the water table. The original portion of the cave was formed by phreatic flow along two intersecting joints, and later was enlarged by vadose flow along an underlying fracture. Because these different processes thus occurred in separate joint systems, the cave also illustrates the importance of fracture patterns in controlling speleogenesis. In addition, Cave of the Mounds is richly decorated with cave formations (speleothems) of most known varieties, including stalagmites measuring 18 feet in height, and exhibits many colorful displays of mineral deposits, including pure calcite. The cave is formed in a 300-foot thick formation of Ordovician dolomite, and is located within the unglaciated area of Wisconsin 15 miles west of the Wisconsinan terminal moraine. It is managed for educational and commercial purposes and is used extensively as a living laboratory by local secondary schools, regional speleological societies, and various universities and museums from throughout the Nation. (November 1987) Owner: Private

The following is a correction to the list of natural landmarks included on the National Registry of Natural Landmarks and published in the **Federal Register**, Part III, March 1, 1983 on pages 8699 and 8702.

Puerto Rico

Cabo Rojo—Owner: Federal—(previously listed as Owner: Federal Commonwealth of Puerto Rico)

Virgin Islands

St. Croix

Sandy Point—Owner: Federal—(previously listed as Owner: Virgin Islands Government, Private)

West Virginia

Greenbrier County

Organ Cave System—(previously listed as Greenbrier Caverns)

[FR Doc. 88-4146 Filed 3-28-88; 8:45 am]
BILLING CODE 4310-70-M

Federal Register

Tuesday
March 29, 1988

Part III

Department of Transportation

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress; Notice

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The attached document, *Automotive Fuel Economy Program, Twelfth Annual Report to the Congress*, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163) which requires in pertinent part that "each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

Barry Felrice,

Associate Administrator for Rulemaking.

March 24, 1988.

AUTOMOTIVE FUEL ECONOMY PROGRAM—TWELFTH ANNUAL REPORT TO THE CONGRESS, JANUARY 1988

Section I: Introduction
Section II: Fuel Economy Improvement by Manufacturers
Section III: 1987 Activities
Section IV: Impact of Domestic Content Amendment
Section V: Use of Advanced Technology

Section I: Introduction

The Federal government got into the business of regulating fuel economy in the aftermath of the 1973–74 Arab oil embargo. We have largely met the goals that were set at that time of energy crisis, and the average fuel economy of new cars in the U.S. has nearly doubled from model years 1975 to 1987.

This report shows that overall fleet fuel economy improved for new U.S. passenger cars from 28.0 mpg in model year 1986 to 28.2 mpg 28.2 mpg in model year 1987, exceeding the legislative goal of 27.5 mpg.

The law, unfortunately, provides strong incentives for domestic manufacturers to import parts or to build the entire automobile outside U.S. borders. Consumer choice is being limited in the new car showrooms of domestic manufacturers, while foreign manufacturers who build only small, high mileage cars are free to ignore CAFE considerations entirely.

The CAFE regulation is now not an energy conservation issue; it's a jobs preservation issue. The greatest contribution we can make to keeping jobs in the United States and to making the domestic auto industry competitive on a worldwide basis is to repeal the CAFE rules. Thousands of American jobs are threatened because of an anachronistic law that is doing substantial harm to our economy and our trade balance.

This Twelfth Annual Report to the Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1987 regarding implementation of applicable Section of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report by January 15th of each year. Included in this report are sections summarizing rulemaking activities during 1987 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III of the Department of Energy Act of 1978 (Pub.L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States (U.S) market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include: (1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them; (4) preparing reports to Congress annually on the fuel economy program; (5) enforcing fuel economy standards and regulations; and (6) responding to petitions concerning domestic production by foreign manufacturers and other matters.

To date, passenger car fuel economy standards have been established by the Congress for Model Years (MY's) 1987 through 1980 and for 1985 and thereafter, and by NHTSA for MY's 1981 through 1984. In addition, during 1985 and 1986, NHTSA amended passenger car standards for MY's 1986 through 1988. Standards for light trucks have been established by NHTSA for MY's 1979 through 1989. All current standards are listed in Table I–1.

On August 5, 1987, the Secretary of Transportation submitted to the Congress a draft bill to repeal the provisions for fuel economy standards established in Title V of the Motor Vehicle Information and Cost Savings Act. The bill (S.1764) was referred to the Senate Commerce Committee where it awaits action. The fuel economy standards required by this law have now put U.S. manufacturers at a competitive disadvantage with foreign importers and threaten thousands of American jobs. This is due largely to the domestic content requirement of the statute. Continuing the corporate average fuel economy (CAFE) requirements may encourage U.S. manufacturers to build large cars overseas to comply with the fuel economy standards for their domestic fleet, give foreign importers a growing competitive advantage in the largecar segment of the market, and reduce the range of American-built cars available to consumers.

TABLE I–1.— FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1989 (IN MPG)

Model year	Light Trucks [1]	Passenger cars		
		Two-wheel drive	Four-wheel drive	Composite [2, 3]
1978	[4] 18.0			
1979	[4] 19.0	17.2	15.8	17.2
1980	[4] 20.0	16.0	14.0	([5])
1981	22.0	[6] 16.7	15.0	([5])
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[8] 26.0	21.0	19.5	20.5

TABLE I-1.— FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1989 (IN MPG)—Continued

Light Trucks [1]	Model year	Passenger cars		
		Two-wheel drive	Four-wheel drive	Composite [2, 3]
1988	[8] 26.0	21.0	19.5	20.5
1989	[4] 27.5	21.5	19.0	20.5

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY's 1980-1989 are for light trucks with a GVWR of 8,500 lbs. or less.
[2] For MY 1979, light truck manufacturers may comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.
[3] For MY's 1982-1989, manufacturers may comply with the two-wheel and four-wheel drive standards or may combine their two-wheel and four-wheel drive light trucks and comply with the composite standard.
[4] Established by Congress in Title V of the Act.
[5] Manufacturers whose light truck fleet is powered exclusively by basic engines which are not also used in passenger automobiles, must meet standards of 14 mpg and 14.5 mpg in MY's 1980 and 1981, respectively.
[6] Revised in June 1979 from 18.0 mpg.
[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for composite.
[8] Title V provided the Department of Transportation with the authority to amend the standard of 27.5 mpg for 1985 and subsequent model years. NHTSA lowered the standard to 26.0 for MY 1986 in October 1985 and to 26.0 mpg for MY's 1987 and 1988 in October 1986.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1986 have been updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the *Eleventh Annual Report to the Congress* and, together with current data for MY 1987, are listed in Tables II-1 and II-2.

Overall fleet fuel economy improved for passenger cars from 28.0 mpg in MY 1986 to 28.2 mpg in MY 1987. Continued lower fuel prices contributed to the low demand for diesel engines (0.3 percent for both MY 1986 and MY 1987). For MY 1987, Corporate Average Fuel Economy (CAFE) values increased over MY 1986 levels for only 7 of 27 passenger car manufacturers which produced cars in both MY's 1986 and 1987. (See Table II-1.) However, these 8 companies accounted for about 56 percent of the total MY 1987 production.

Manufacturers did continue to introduce new technologies and more fuel-efficient models. For MY 1987, one domestic manufacturer raised its passenger car CAFE 0.2 mpg from its MY 1986 level, one did not change, and one fill 0.2 mpg below its MY 1986 CAFE level. Overall, the three domestic manufacturers *increased* their CAFE by 0.1 mpg. The average CAFE for imported cars *declined* 0.7 mpg in MY 1987 from the MY 1986 CAFE level.

TABLE II-1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER,[1] MODEL YEARS 1986 AND 1987

Manufacturer	Model Year—CAFE (mpg)	
	1986	1987
Domestic:		
Chrysler	27.8	27.6
Ford	26.8	26.8
GM	26.2	26.4
Sales Weighted Average	26.6	26.7
Imported:		
Alfa Romeo	27.9	25.1
AMC/Renault	33.5	33.0
Bertone	29.4	29.2
BMW	25.7	24.9
Chrysler Imports	36.8	33.9
Ford Imports	24.3	23.8
GM Imports	41.2	39.7
Honda	33.7	34.0
Hyundai	35.1	34.0
Imported:		
Isuzu	35.5	37.9
Jaguar	19.0	19.1
Mazda	29.7	29.0
Mercedes-Benz	21.3	22.3
Mitsubishi	30.7	31.2
Nissan	30.2	29.4
Peugeot	24.8	23.8
Porsche	25.5	25.3
Saab	26.3	26.1
Sterling		22.7
Subaru	31.9	30.7
Suzuki	52.5	50.4
Toyota	32.7	32.9
Volvo	26.8	26.4
VW [2]	29.8	29.8
Yugo	32.1	33.9
Sales Weighted Average	31.7	31.0
Total Fleet Average	28.0	28.2
Fuel Economy Standards	26.0	26.0

[1] Manufacturers of fewer than 10,000 passenger cars annually that have requested alternative fuel economy standards are not listed.
[2] Includes VW domestic production and VW and Audi imports.

Note: Some MY 1986 CAFE values differ from those used in the Eleventh Annual Report to the Congress due to inclusion of final EPA calculations.

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER, MODEL YEARS 1986 AND 1987

Manufacturer	Model Year—CAFE (mpg)					
	Two-wheel drive		Four-wheel drive		Composite [1]	
	1986	1987	1986	1987	1986	1987
Domestic:						
AMC	23.7	23.9	20.7	20.7		
Chrysler					19.7	21.0
Ford					20.2	20.4
GM	20.0	20.5	18.6	18.7		
Sales Weighted Average	20.1	20.6	19.3	19.3	20.1	20.6
Imported:						
Chrysler Imports					23.0	22.2
Ford Imports	27.9	26.8		21.0		
Isuzu	29.9	30.5	23.1	22.3		

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER, MODEL YEARS 1986 AND 1987—Continued

Manufacturer	Model Year—CAFE (mpg)					
	Two-wheel drive		Four-wheel drive		Composite [1]	
	1986	1987	1986	1987	1986	1987
Mazda	27.7					26.5
Mitsubishi	28.4	26.2	23.0	22.1		
Nissan	25.8		22.4			23.4
Range Rover				16.4		
Subaru			28.2	27.6		
Suzuki			33.1	33.1		
Toyota	27.4	27.6	24.2	23.8		
VW					19.1	18.9
Sales Weighted Average	27.2	28.1	24.8	25.5	22.6	23.8
Total Fleet Average	22.8	22.2	21.6	21.4	20.2	21.0
Fuel Economy Standard	20.5	21.0	19.5	19.5	20.0	20.5

[1] In MY's 1986 and 1987, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine their two-wheel and four-wheel drive trucks and comply with the composite standards.

Note: Some MY 1986 CAFE values differ from those used in the Eleventh Annual Report to Congress due to the use of final EPA calculations.

For light trucks, fleet average MY 1987 CAFE decreased from MY 1986 levels by 0.6 mpg for manufacturers using the two-wheel drive standard and by 0.2 mpg for manufacturers using the four-wheel drive standard, and increased by 0.8 mpg for manufacturers using the composite standard. CAFE levels for imported light truck manufacturers increased by 0.9 mpg for two-wheel drive trucks, 0.7 mpg for four-wheel drive trucks, and 1.2 mpg for manufacturers using the composite standard. CAFE levels for domestic light truck manufacturers increased by 0.5 mpg for manufacturers using the two-wheel drive or composite standards, and remained the same for manufacturers using the four-wheel drive standards.

Two domestic and two imported light truck manufacturers are not projected to achieve the level of the MY 1987 CAFE standards. Also, a number of European manufacturers with limited model offerings are not likely to meet the level of the MY 1987 passenger car CAFE standard. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1987 CAFE projects may change when final MY 1987 CAFE figures are provided to NHTSA by EPA, in mid-1988. In addition, many manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to eliminate current deficits.

Fleet average fuel economy for all MY 1987 passenger cars exceeded both the MY 1987 standard and the higher 27.5 mpg standard originally set by the Congress of MY's 1985 and beyond. Thus, even though NHTSA lowered the original MY 1987 standard in accordance with statutory criteria, overall CAFE continued to rise. Fleet average fuel economy for MY 1987 light trucks also exceeded the MY 1987 standards for either the separate two- and four-wheel drive fleets or on the composite basis.

NHTSA estimates that by the year 2000 the projected cumulative passenger car and light truck fuel savings due to manufacturers' achievements through calendar year 1987 will amount to approximately 595 billion gallons, when compared to the consumption projected at MY 1976 new vehicle fuel economy levels. This calculation assumes that manufacturers will continue to achieve the fuel economy levels of existing standards for the post-1989 period and that on-road fuel economy averages 15 percent below EPA ratings, which is consistent with current EPA labeling requirements.

The characteristics of the MY 1987 passenger car fleet reflect a continuing trend toward slightly heavier and higher performance cars. (See Table II-3.) Since MY 1986, the average curb weight increased 5 pounds for the domestic fleet and 49 pounds for the import fleet, but the total new passenger car fleet is 16 pounds lighter because of the large share of relatively lighter imports. From MY 1986 to MY 1987, horsepower per 100 pounds increased from 91 to 4.03 for domestic cars and from 3.84 to 3.91 for imported cars in MY 1987. Average engine size is smaller for domestic and slightly larger for import cars. The size class breakdown shows a slight trend away from large, mid-size and subcompact cars to compacts for the overall fleet. The shift of import cars to compact size is particularly pronounced. The import share of the passenger car market increased by almost 8 percentage points in MY 1987. These trends toward larger, more powerful imports underscore the Department's concerns over the potentially adverse effects of CAFE standards on domestic manufacturers.

TABLE II-3—PASSENGER CAR FLEET CHARACTERISTICS FOR MODEL YEARS 1986 AND 1987

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1986	1987	1986	1987	1986	1987
Fleet average fuel economy (mpg)	28.0	28.2	26.6	26.7	31.7	31.0
Fleet average curb weight (lbs.)	2,821	2,805	2,977	2,982	2,473	2,522
Fleet average engine displacement (in.^{3})	169	162	192	190	116	117
Fleet average horsepower/weight ratio, HP/100 lbs	3.89	3.98	3.91	4.03	3.84	3.91
Percent of fleet	100	100	69.0	31.4	31.0	38.6
Segmentation by EPA size class (percent):						
Two-seater	3.3	2.6	1.9	1.5	6.4	4.4

TABLE II-3—PASSENGER CAR FLEET CHARACTERISTICS FOR MODEL YEARS 1986 AND 1987—Continued

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1986	1987	1986	1987	1986	1987
Minicompact	0.5	1.0	0.0	0.0	1.8	2.7
Subcompact [1]	23.8	20.0	10.3	7.8	54.7	39.2
Compact [1]	31.6	40.1	31.2	33.7	32.6	50.0
Midsize [1]	27.8	23.9	38.1	36.8	4.2	3.4
Large [1]	13.0	12.5	18.6	20.1	0.3	0.4
Percent diesel engines	0.3	0.3	0.1	0.1	0.7	0.6
Percent turbocharged engines	3.6	3.8	3.2	3.5	4.6	4.8
Percent fuel injection	65.6	72.0	70.2	82.4	55.1	56.0
Percent front-wheel drive	71.1	74.6	67.9	68.8	78.4	84.0
Percent automatic transmissions	75.6	75.0	87.8	89.7	48.3	51.7
Percent of automatic transmissions with lockup clutches or split torque features	84.4	83.0	89.2	84.6	65.0	78.5

[1] Includes associated station wagons.

The 0.1 mpg passenger car fuel economy improvement for the MY 1987 domestic fleet may be attributed primarily to technology changes in two areas: increased use of front-wheel drive (to reduce driveline losses) and a pronounced increase in the use of fuel injection.

The 0.7 mpg passenger car fuel economy decline for the MY 1987 import fleet is attributed to the shift from subcompact to compact size cars, increases in average weight and engine size, and the shift to higher performance cars as indicated by the higher ratio of horsepower to weight. These changes more than offset gains due to increased application of front-wheel drive and lockup torque converter clutches on automatic transmissions. However, passenger car CAFE for the MY 1987 import fleet continued to exceed 30.0 mpg for the seventh consecutive model year.

The characteristics of the MY 1987 light truck fleet (see Table II–4) show a slight average weight reduction of 16 pounds and higher performance as reflected by the increase in the average horsepower to weight ratio. Increased popularity of small pickups and compact vans contributed to the 0.1 mpg fleet fuel economy improvement for MY 1987 as did the 25 percentage point increase in the use of fuel injection and the 5 percentage point increase in the use of lockup torque converter clutches on automatic transmissions. Diesel engine usage declined in light trucks to 0.6 percent in MY 1987 from 1.1 percent in MY 1986.

The impact share of the MY 1987 light truck fleet declined to 28.6 percent, 2.4 percent lower than MY 1986.

TABLE II-4—LIGHT TRUCK FLEET CHARACTERISTICS FOR MODEL YEARS 1986 AND 1987

Characteristics	Total fleet		2WD fleet		4WD fleet	
	1986	1987	1986	1987	1986	1987
Fleet average fuel economy (mpg)	21.5	21.6	22.8	22.2	21.5	21.5
Fleet average equivalent test weight (lbs.)	3,813	3,797	3,760	3,745	3,929	3,902
Fleet average engine displacement (in.^{3})	213	210	215	212	207	207
Fleet average horsepower/equivalent test weight ratio, HP/100 lbs	3.27	3.38	3.30	3.39	3.21	3.36
Percent of fleet	100	100	68.7	67.2	31.3	32.9
Import share (percent)	31.0	28.6	27.8	25.0	32.2	36.1
Segmentation by type (percent):						
Passenger van:						
Compact	11.1	14.6	15.6	21.1	1.0	1.5
Large	1.2	1.1	1.8	1.7	.....	.....
Cargo Van:						
Compact	3.3	3.0	4.8	4.4	.....	0.2
Large	7.9	7.6	11.5	11.3	.....	.....
Small pickup	28.5	29.0	36.9	35.8	10.2	15.1
Large pickup	28.8	21.9	25.2	20.4	36.6	25.1
Special purpose	18.7	22.5	3.5	5.0	52.1	58.1
Cab chassis	0.5	0.3	0.7	0.4	.....	.....
Percent diesel engines	1.1	0.6	0.9	0.7	1.4	0.4
Percent fuel injection	41.9	66.8	38.1	65.9	50.2	68.6
Percent automatic transmissions	58.2	60.3	62.7	65.7	48.3	49.4
Percent of automatic transmissions with lockup clutches	72.4	77.6	69.4	76.8	81.0	79.6

Section III: 1987 Activities

A. Petitions to Amend Passenger Car CAFE Standards

During 1987, the agency received two petitions to amend the passenger car CAFE standards. On August 3, 1987, Mercedes-Benz of North America, Inc., petitioned the agency to amend the CAFE standards for MY's 1984 and 1985 to 26.0 mpg or lower. On November 10, 1987, General Mortors Corporation (GM) petitioned the agency to amend the MY 1985 passenger car CAFE standard to no higher than 26.0 mpg.

Mercedes' petition contends that the 1984 and 1985 Model Year CAFE standards exceed the statutorily mandated "maximum feasible" average fuel economy level, and, accordingly, must be lowered to the actual maximum feasible level. Mercedes also indicates that they believe that the agency has misinterpreted the statutory criterion of "maximum feasible" level, by excluding significant segments of the automobile industry, such as European

manufacturers and limited-line manufacturers.

GM states that the MY 1985 CAFE level exceeds the "maximum feasible" criterion in the Motor Vehicle Information and Cost Savings Act and requests the agency to conform the standard to that criterion. GM contends that NHTSA's analysis in amending the MY 1986 CAFE standard to 26.0 mpg demonstrates that the standard for MY 1985 also should be amended, and that neither the provisions of the Cost Savings Act nor general principles of administrative law preclude the agency from taking such action.

Both petitions are under review by the agency.

B. Light Truck Standards

NHTSA published a final rule establishing MY 1989 light truck fuel economy standards on March 4, 1987 (52 FR 6564). The agency set a composite standard of 20.5 mpg, with optional standards of 21.5 mpg for two-wheel drive (2WD) trucks and 19.0 mpg for four-wheel drive (4WD) trucks.

In the final rule for MY 1989 trucks, the agency determined that Ford and GM were the "least capable" manufacturers with substantial shares of combined light truck sales and 2WD sales. Also, the agency determined that GM was the least capable manufacturer with a substantial share of 4WD sales.

The agency concluded, upon balancing the relevant statutory factors, that the relatively small and uncertain energy savings that would be associated with setting a standard above Ford's and GM's capability would not justify the economic harm to the companies and economy as a whole. The agency projected that Ford could achieve a combined MY 1989 fuel economy level no higher than 21.0 mpg and GM no higher than 20.5 mpg. In contrast, the agency concluded that Chrysler could achieve 21.8–23.3 mpg. The 20.4 to 21.3 mpg figures projected by Ford were subject to a potential loss of 0.4 to 0.6 mpg due to sales shifts towards larger engines and vehicles (primarily due to possible declines in fuel prices and subsequent increased consumer demand for larger trucks and engines), as well as a potential loss of 0.5 mpg due to technological risks. The agency believed that it was likely that some, but not all, of these risks would occur and that Ford's MY 1989 capability did not exceed 21.0 mpg. The 20.9 mpg figure projected by GM was subject to a potential loss of 0.4 mpg due to mix-shift risk resulting from lower gas prices and shifts towards larger trucks and engines for MY 1989.

The agency selected 20.5 mpg as the final composite standard to balance the potentially serious adverse economic consequences associated with the realization of the above market and technological risks against Ford's and GM's opportunities as the "least capable" manufacturer with a substantial share of sales. Since Ford and GM produce more than 52 percent of all light trucks subject to the fuel economy standards, their capabilities have a significant effect on the level of the industry's capability and, therefore, on the level of the standards.

Proposed standards for MY's 1990 and 1991 light trucks were published on November 12, 1987 (52 FR 43366). That rule proposed that final composite standards be set within a range of 20.0 mpg to 21.0 mpg for MY's 1990 and 1991. A final rule is expected to be issued in early 1988.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger automobiles, worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year before the affected model year.

The agency has pending petitions for alternative standards from Lamborghini, Lotus, Maserati, LondonCoach, Ferrari, Bitter, Shelby, Dutcher Motors, and Rolls-Royce. Some manufacturers previously eligible for alternative fuel economy standards may not be eligible for future model years as a result of acquisitions or marketing arrangements with larger manufacturers.

D. Carryback Plans

Section 502(1) of the Act allows an automobile manufacturer to earn fuel economy credits during any model year in which the manufacturer's fleet exceeds the established CAFE standard. The amount of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the average fuel economy of the manufacturer's fleet in the model year exceeds the standard by the total number of vehicles in the manufacturer's fleet for the model year.

Already earned fuel economy credits are carried forward by the agency, (with opportunity to comment by the manufacturer) and allocated to any of the three succeeding model years in which the manufacturer's fleet falls below the CAFE standard. For example, credits earned in MY 1983 have been used to offset deficiencies in MY 1985. A manufacturer also may submit to the agency a carryback plan, which demonstrates it will earn sufficient credits within the following three model years which can be allocated to meet the CAFE.

GM, Ford, and Saab submitted carryback plans in 1987 to respond to 1985 CAFE levels that were below the prescribed standard. GM's plan for MY 1985 domestic cars was approved, as were Saab's plan for MY 1985 import cars and Ford's plans for MY 1985 domestic and import cars and MY's 1986–1987 import cars.

E. Enforcement

With completion by EPA of final CAFE computations for MY 1985 for most passenger car fleets, the agency initiated appropriate enforcement actions for manufacturers that did not meet the CAFE standard. GM, Ford, and Saab submitted carryback plans as discussed above. BMW, Peugeot, and Volvo each had sufficient CAFE credits earned within the three preceding model years to cover their shortfall in MY 1985. Aston Martin Lagonda, Jaguar, and Porsche paid CAFE penalties totalling $10,005,140. Mercedes-Benz petitioned the agency for a reduction in the MY 1985 standard as discussed above.

In December 1987, EPA published a final rule disallowing any fuel economy test procedure adjustment credits for light trucks. This decision will enable NHTSA to resolve light truck fuel economy compliance issues for earlier model years during 1988.

Section IV: Impact of Domestic Content Amendment

The Automobile Fuel Efficiency Act of 1980 (Act of 1980) modified several provisions of the Motor Vehicle Information and Cost Savings Act. One modification concerned the domestic content provision in Section 503 of Title V. Section 503 specifies that passenger cars having less than 75 percent of the cost to the manufacturer attributable to the value added in the United States or Canada are considered to be foreign manufactured. Conversely, vehicles with at least 75 percent value added in the U.S. or Canada are considered to be domestically manufactured for the purposes of complying with fuel

economy regulations. Section 503 also requires that domestically and foreign produced passenger automobiles not be grouped together for the purpose of complying with fuel economy standards. Therefore, highly fuel-efficient vehicles with less than 75 percent value added in the United States or Canada may not be used by a manufacturer to offset the lower fuel economy of its domestically produced cars.

The domestic content provision was included in Title V to promote employment in the U.S. automobile industry by encouraging manufacturers to produce high fuel economy vehicles in this country, instead of relying on the importation of such cars which they produced or purchased abroad. However, foreign manufacturers choosing to build their most fuel-efficient vehicles in the U.S. or Canada, with at least 75 percent domestic content, would not, under the original domestic provision, be permitted to average such cars with their less fuel-efficient foreign-produced models. Thus, there existed a disincentive for foreign manufacturers to initiate U.S. production and to achieve high levels of domestic content. The Act of 1980 permits manufacturers completing their first year of production in the period 1975–85 to petition NHTSA for exemption from the separate compliance provisions of Section 503 of Title V. Such a petition must be granted unless the agency finds that doing so would result in reduced employment in the U.S. automobile industry.

Volkswagen of America, Inc., (VWoA) was the only manufacturer to petition NHTSA for an exemption from the separate compliance provision. The agency granted the petition for relief on October 23, 1981. The agency concluded that granting the petition would not result in adverse effects on employment in the U.S. automobile industry.

During 1987, as required by the Act of 1980 (section 512(c)(1) of Title V), the Secretaries of Transportation and Labor made their sixth annual examination of the impact of the domestic content amendment to Title V. During 1987, employment in the domestic auto industry shrank as production declined. Through October 1987 (the latest figures available when this report was prepared), domestic passenger car production declined 9.5 percent compared to the same period in 1986. VWoA car production declined 28.3 percent; however, VWoA accounts for only 0.9 percent of total domestic car production. According to the U.S. Department of Labor, total employment in SIC (Standard Industrial Classification) 371 (Motor Vehicles and Equipment) declined from an average of 865,000 for January through October 1986 to 842,000 for the same period in 1987.

On November 20, 1987, VWoA announced that it will discontinue assembly of automobiles in the U.S. at the end of the 1988 model year. This is due to economic considerations unrelated to the domestic content provision. Coincidentally with the phase-out of U.S. production, VWoA estimates that the MY 1988 U.S. produced Golf and Jetta, its only models assembled in the U.S. during MY 1988, will contain less than 75 percent domestic content. These models will thus be treated as "imported" cars for fuel economy compliance purposes as are the other VWoA passenger cars sold in the U.S.

There is no reason to change the 1981 findings of NHTSA that granting VWoA's petition will promote employment in the U.S. automobile industry without causing undue harm to domestic manufacturers. There is no evidence that the application of the exemption during MY's 1983–1987 has hurt U.S. employment or the domestic automobile industry. The domestic content of VWoA's U.S.-produced models will decline to less than 75 percent for MY 1988, but that is due to outsourcing of components in connection with closing U.S. manufacturing operations at the end of this model year.

Another provision of the Act of 1980 permitted any manufacturer to apply for an exemption from the domestic content requirement if it plans to phase in domestic production of a new vehicle by gradually increasing its domestic content to at least 75 percent. A manufacturer which satisfies the statutory requirements is permitted to include up to 150,000 passenger automobiles in its domestic fuel economy compliance fleets if the cars have at least 50 percent domestic content initially and if the manufacturer submits and the agency approves a plan for achieving 75 percent domestic content by the fourth year of the exemption. In 1982 American Motors Corporation (AMC) petitioned the agency to be permitted to take advantage of this amendment to Title V. The agency granted this petition for AMC to include U.S.-assembled Renault Alliance and Encore models in its domestic fleet for calculation of CAFE, provided these vehicles had at least 50 percent domestic content in MY 1983 and at least 75 percent in MY 1986.

In December 1986, AMC informed the agency that the domestic content of MY 1986 U.S.-assembled Renault Alliance and Encore models was less than 75 percent. Thus, in failing to meet the provisions of the exemption, AMC's entire production of Renault Alliance and Encore models during MY's 1983–1986 reverted to import status for CAFE compliance purposes. For MY 1987, AMC classified the Renault Alliance, its only U.S.-assembled passenger car, as an import. U.S. production of the model ended permanently in June 1987.

Section V: Use of Advanced Technology

This section fulfills the statutory requirement of section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95–238) which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1987.

New Models

In 1987, manufacturers produced a number of new lighter-weight, front-wheel-drive passenger cars and some new lighter-weight truck models.

Some of the domestic newcomers include Chevrolet's Corsica and Beretta cars, Pontiac's large H-body Bonneville and Chrysler's J-body LeBaron mid-size car. The compact Beretta two-door and Corsica 4-door models share the L-body platform and incorporate aerodynamic styling. The front-wheel-drive Bonneville replaces the old rear-wheel-drive 4-door sedan and expands the use of GM's H-body to the Pontiac line. The J-body mid-size LeBaron has lightweight bumper parts and aerodynamic styling to improve fuel economy.

Some import newcomers include the compact Pontiac LeMans and the subcompact Ford Festiva and Mitsubishi Precis from South Korea; the subcompact Subaru Justy from Japan; the subcompact Volkswagen Fox from Brazil; and the compact Mexican-built Mercury Tracer.

In the domestic light truck area, GM introduced in Spring 1987, an all new line of full-size MY 1988 pickups. These new models are built on GM's GMT400 platform and feature lighter-weight, better aerodynamic styling, and electronic anti-lock rear brakes. Competition continued to increase in the compact van area with new entries from Mitsubishi and Nissan.

New Material Applications

For the 1987 model year, automakers chose aluminum, plastics material, high strength steel, and stainless steel for a number of significant new component applications in their cars, vans, and pickup trucks.

GM's Generation II 2.8-liter V-6 and 2.0-liter 4-cylinder engines entered the market with redesigned cylinder heads made of aluminum instead of cast iron. The rocker cover for the 2.0-liter engine also is made of aluminum. The rocker cover and heads together shave 13 pounds of weight from the 4-cylinder engine.

In the V–6 powerplants, aluminum also is being used in a number of other redesigned components, including the front cover, plenum, and certain brackets. These applications save an estimated 35 pounds according to GM engineers.

GM also specified the light metal for important body applications including several major body panels on the Cadillac Allante, the removable hardtop roof (which weighs only 58 pounds), the truck lid, and the hood.

Another new aluminum application involves the drive shafts for GM's redesigned standard-size pickup trucks. The new shafts which weigh about 15 pounds are one-piece units coated with graphite fiber for added stiffness and strength. They are about 20 pounds lighter and have fewer imbalance and vibration problems than conventional two-piece steel shafts. Ford, which was already using aluminum drive shafts on its small vans, expanded the applications of such units to the 1987 model F-Series large pickup truck and Econoline large vans.

Chrysler's new aluminum applications in MY 1987 include cylinder heads, rocker arms, and intake manifolds on 3.0-liter V-6 engines (imported from Japan's Mitsubishi Motor Corporation for use in Chrysler's Dodge Caravan/Plymouth Voyager minivans) and bumper reinforcements for the soft front ends on the new J-body LeBaron models.

A new application for plastic materials in 1987 models involves the fenders on the Buick LeSabre T-Type coupe. These thermoplastic fenders are made of polyphenylene oxide (PPO), and are the first on a production car in the U.S. Currently, the only other thermoplastic body panels of substantial size employed on a U.S.-built car are the rear quarter panels on the Pontiac Fiero. Because the thermoplastics can withstand the heat of the auto industry's existing paint ovens and require few or no post-mold curing and secondary processing operations, their use is expected to grow in the future.

Another new application for plastic composites in MY 1987 is the glass fiber reinforced polyester hood, formed from sheet molding compound (SMC), on Chevrolet's Cavalier Z24. Chrysler's J-body LeBaron coupes have urethane bumper fascias in the front and rear. The front bumper fascia retainers on the Chevrolet Beretta and Corsica models also are made of SMC, and the fascias are soft urethane.

Applications for both high strength (HS) steel and stainless steel grew again in MY 1987. In both cases, manufacturers switched from conventional to HS steel to reduce weight, but impact strength also was a consideration. Major uses of HS steel include the following: (1) Side frame members in the front of new 4-door Civic models from Honda, (2) cargo box sides on the new mid-size Dodge Dakota pickup truck and the galvanized beds for those same cargo boxes, and (3) reinforcements behind both front and rear bumpers on the Dodge Shadow and Plymouth Sundance.

Stainless steel applications can be found in many new exhaust systems. For example, GM developed a new second generation stamped and fabricated stainless exhaust manifold for use in the 2.0-liter 4-cylinder and 2.8 liter V–6 engines. These manifolds replaced heavier tubular units that did not dissipate heat as quickly, according to GM engineers.

Electronics

Application of electronic components that increase fuel economy in vehicles continues to rise. Market projections call for an average value of $1,700 in electronics per car by 1995, although the MY 1987 Cadillac Allante already has well over $2,000 in electronics as standard equipment. The use of carburetors has greatly declined in passenger cars, being replaced by more complicated and precise sequential, multiport, digital systems. Cars with feedback carburetors were featured in 33.8 percent of the U.S. production, according to the 1987 *Ward's Automotive Report's* survey of electronic equipment, while almost half (46.9 percent) had single-point fuel injection and 19.3 percent had multipoint injection.

Summary

Due to the stabilization of oil prices, consumer demand has shifted slightly to more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, has increased the horsepower of its engines and shifted production mix causing an increase in average roominess of MY 1987 passenger cars. Still, there were some considerable technical gains, particularly in lightweight material usage, that contributed to improvements in fuel economy in MY 1987.

[FR Doc. 88–6764 Filed 3–28–88; 8 45 am]
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Federal Register

Tuesday
March 29, 1988

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Minimum Standards for Administration, Interpretation, and Use of Education Tests

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on minimum standards for the administration, interpretation, and use of education tests to coincide with a change in the Bureau of Prisons rule on the Adult Basic Education (ABE) Program which raised the minimum academic achievement level from a 6.0 to an 8.0 grade level.

EFFECTIVE DATE: March 29, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on minimum standards for the administration, interpretation, and use of education tests. A final rule on this subject was published in the **Federal Register** March 19, 1986 (at 51 FR 9614). The present amendment is intended to more effectively implement the Bureau's rule on the Adult Basic Education (ABE) Program, published in the **Federal Register** June 10, 1986 (at 51 FR 21114 et seq.).

In addition to the previously published proposed amendments, the Bureau is making non-substantive rules changes and has decided to republish the entire rule to allow ease of review.

Based on the implementation of the sentencing provisions of the Comprehensive Crime Control Act of 1984, § 544.11(a)(2) is revised to reference 18 U.S.C. 3552(b). That section became effective November 1, 1987, and provides for studies by the Bureau of Prisons. 18 U.S.C. 4205(c) was repealed as of November 1, 1987.

The final rule on the ABE program requires that an inmate who cannot read, write, or do mathematics at the 8.0 academic grade level shall be required to attend an adult basic education program for a minimum of 90 calendar days. The SAT (or another standardized test) is the means by which the Bureau determines whether an inmate's academic achievement is at the 8.0 grade level. Since the present amendment is intended to more effectively implement a specific existing requirement of the ABE program, the Bureau of Prisons finds good cause under 5 U.S.C. 533(d) to make this amendment effective immediately, without notice of proposed rulemaking, opportunity for public comment, or delay in the effective date. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. In §§ 544.12(a)(2) and 544.13, the reference to a 6.0 grade level is changed to read an 8.0 grade level.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR Chapter V is amended by revising Subchapter C, Part 544, Subpart B as set forth below.

Dated: March 16, 1988.

J. Michael Quinlan,

Director, Bureau of Prisons.

In Subchapter C, Part 544, Subpart B is revised to read as follows:

Subchapter C—Institution Management

PART 544—EDUCATION

1. The authority citation for Part 544 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 4001, 4042, 4081, 4082, 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. Part 544, Subpart B, is revised to read as follows:

Subpart B—Minimum Standards for Administration, Interpretation, and Use of Education Tests

Sec.

544.10 Purpose and scope.
544.11 Applicability.
544.12 Procedures.
544.13 Refusal to take the Stanford Achievement or other standardized test.

Subpart B—Minimum Standards for Administration, Interpretation, and Use of Education Tests

§ 544.10 Purpose and scope.

The Bureau of Prisons administers appropriate educational tests to inmates confined within its institutions.

§ 544.11 Applicability.

(a) The provisions of this subpart on minimum standards for administration, interpretation, and use of education tests apply to all inmates in Federal institutions except:

(1) Pre-trial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer; and

(4) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule (for example, temporary medical transfers, holdovers).

(b) Staff shall document in the inmate's educational file the specific reasons for not requiring the inmate to take educational tests.

§ 544.12 Procedures.

(a) Staff shall administer the Stanford Achievement Test (SAT) to an inmate who meets the following criteria.

(1) Except as specified in § 544.11, a newly committed inmate shall be required to take the SAT within 30 days of the inmate's arrival at the institution. For the non-English-speaking inmate, another appropriate standardized test may be used to determine the inmate's current level of academic achievement.

(2) An inmate returning or transferring to a federal institution who has not taken the SAT within the last two years (verified by the Supervisor of Education or designee), and whose previous SAT scores in the Reading, Mathematics, and Language subtests were below the 8.0 academic grade level shall be required to take the SAT or, for the non-English-speaking inmate, another standardized test.

(b) Staff may administer other appropriate aptitude and achievement

tests, as needed, to measure specific achievement or aptitude.

(c) Staff may not allow inmates to administer, score, record, or interpret tests which are the subject of this rule. Staff may not assign the clerical handling of such tests to an inmate.

§ 544.13 Refusal to take the Stanford Achievement or other standardized test.

An inmate who refuses to take the SAT (or other standardized test) to determine if the inmate has achieved a test score equivalent to the 8.0 academic grade level shall be required to attend an adult basic education program (ABE) for a minimum of 90 calendar days (see Part 544, Subpart H).

[FR Doc. 88-6728 Filed 3-28-88; 8:45 am]

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28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Occupational Education Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on Occupational Education Programs. The Bureau's final rule is intended to combine several Bureau policies describing the types of Occupational Education Programs available to inmates interested in obtaining a marketable skill while incarcerated.

EFFECTIVE DATE: May 2, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on Occupational Education Programs. The final rule is intended to allow interested inmates the opportunity to obtain marketable skills through a variety of Occupational Education Programs. The final rule combines the Bureau's proposed rule on Vocational Training Programs, published in the **Federal Register** October 1, 1985 (at 50 FR 40116 et seq.) with the Bureau's final rule on Apprentice Training in Institutions, previously published in 28 CFR, Part 544, Subpart F.

The final rule also incorporates several new sections. The Bureau's rule now contains a general section describing the types of Occupational Education Programs. Included in this list is the Bureau's policy on On-the-Job Training (OJT). Although not previously published as a proposed rule, OJT places no new restrictions on inmates, but is intended to provide organized training and instruction under actual working conditions. The rule requires OJT content to parallel, to the extent practicable, the standards required for registered apprenticeship programs by the Bureau of Apprenticeship and Training, U.S. Department of Labor. The final rule also includes a section on Exploratory Training which is intended to provide interested inmates general knowledge of the world of work, rather than specific skill development. Because these additions do not pose any new restrictions on inmates, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to publish this document without notice of proposed rule making, or an opportunity for public comment.

The Bureau received no public comment on its proposed rule on Vocational Training, and is renumbering its existing final rule on Apprenticeship Training without any substantive change. The new final rule is intended to place into one consolidated document the Bureau's long-standing practice of providing work and job experience that may benefit inmates upon release to the community. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. *Section 544.50:* This section is new and describes the Bureau's intent to provide Occupational Education Programs that allow interested inmates the opportunity to obtain marketable skills. Existing § 544.50, setting forth the rule on "Apprentice Training in Institutions", is renamed "Apprentice Training", and becomes new § 544.54.

2. *Section 544.51:* Section 544.51 is new and describes the types of Occupational Education Programs available to interested inmates in Bureau institutions. These programs are established to provide inmates the opportunity to obtain marketable skills.

3. *Section 544.52:* In this section, the Bureau is combining proposed §§ 544.120 through 544.122 into new § 544.52, entitled "Vocational Training". The wording of this section has changed, but the general intent remains the same. Section 544.122 (a) and (c) becomes new § 544.52(b). The provisions of proposed § 544.122(b) are now included within the scope of § 544.56, Exploratory Training. Section 544.123(c) now becomes new § 544.52(c).

4. *Section 544.53:* Section 544.53 is new and places into rule language the Bureau's long-standing policy of providing On-the-Job Training as an additional method to provide inmates marketable skills. Although On-the-Job Training is not sanctioned at the state or national levels, the Bureau has required the program content, to the extent practicable, to parallel the standards required for registered apprenticeship programs by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

5. *Section 544.54:* Existing § 544.50 entitled "Apprenticeship Training in Institutions" is renamed "Apprentice Training" and now becomes new § 544.54. The intent of this paragraph is unchanged.

6. *Section 544.55:* In this section the Bureau expands to all Occupational Education Programs the requirements published in § 544.123 (a) and (b) of its proposed rule on Vocational Training Programs. The final rule requires that a specified portion of all Occupational Education Programs consist of "live work", and that duplication of services among training programs, other departments, and UNICOR (Prison Industries), be eliminated.

7. *Section 544.56:* In this section the Bureau requires institutions to offer, where practicable, Exploratory Training (a study of occupations and industries for the purpose of providing a general knowledge of the world of work) to interested inmates. Exploratory Training Programs (of 100 hours or less in duration) were briefly mentioned in § 544.122(b) of the Bureau's proposed rule on Vocational Training Programs. It was the Bureau's intent, at the time of the proposed rule, to exclude exploratory training programs of 100 hours or less because the program did not include "live work". In the current rule, the Bureau is offering exploratory training as a separate program designed to educate inmates about the world of work in addition to the marketable skill training provided in all Occupational Education Programs.

List of Subjects in 28 CFR Part 544

Education, Libraries, Recreation, Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended by revising Subchapter C, Part 544, Subpart F as set forth below.

Dated: March 16, 1988.

J. Michael Quinlan,

Director, Bureau of Prisons.

In Subchapter C, Part 544, Subpart F is revised to read as follows:

Subchapter C—Institutional Management

PART 544—EDUCATION

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

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 4001, 4042, 4081, 4082, 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Part 544, Subpart F is revised to read as follows:

Subpart F—Occupational Education Programs.

Sec.

544.50 Purpose and scope.
544.51 Types of occupational education programs.
544.52 Vocational training.
544.53 On-the-job training.
544.54 Apprentice training.
544.55 Procedures for occupational education programs.
544.56 Exploratory training.

SUBPART F—OCCUPATIONAL EDUCATION PROGRAMS

§ 544.50 Purpose and scope.

Each Bureau of Prisons institution provides occupational education programs which allow interested inmates the opportunity to obtain marketable skills.

§ 544.51 Types of occupational education programs.

Occupational education programs include the following:

(a) *Pre-industrial training.* Entry level skills training for employment in prison industries.

(b) *Vocational training.* Instruction in specific entry-level or advanced skills.

(c) *On-the-job-training.* Organized instruction and training under actual working conditions, either in the performance of a service through institution maintenance or in Federal Prison Industries, Inc. (UNICOR).

(d) *Apprentice training.* Training through structured apprenticeship programs approved at the state and national levels by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

§ 544.52 Vocational training.

Vocational Training programs will be combined, where opportunities exist, with pre-industrial programs of the same general skill area, and with "live work" provided by UNICOR. Similar cooperative training efforts, to include "live work," shall also be developed for nonindustrial areas.

(a) "Live work" is to be included within each vocational education program. As used in this rule, the term "live work" refers to a product or service produced by the student for actual use by the institution, UNICOR, or another agency. It is characterized by a specific end-product or service goal, as opposed to repetitive classroom work done for training purposes.

(b). The provisions of this rule apply to all vocational education programs, regardless of funding source, except:

(1) Programs granted an exception by the Regional Director; and

(2) Vocational assessment programs.

(c) Vocational training programs shall be combined with pre-industrial training programs offering similar or related training.

§ 544.53 On-the-job-training.

On-the-job-training (OJT) provides a marketable skill through the use of institution resources and facilities with a potential for training inmates in various trades and occupations. The programs are distinctly separate and apart from formalized vocational training programs and approved apprenticeship programs. Completion of OJT does not preclude future placement of an inmate in a formal vocational training program or approved apprenticeship program. To the extent practicable, OJT content is to parallel the standards required for registered apprenticeship programs by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

§ 544.54 Apprentice training.

Apprentice training provides an inmate the opportunity to participate in training which prepares the inmate for employment in various trades. Apprenticeship programs for inmates will be established in those areas of the institution which have the potential to meet the requirements and standards of the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor.

§ 544.55 Procedures for occupational education programs.

(a) A specified portion of all occupational education programs is to consist of "live work."

(b) Duplication of services should be eliminated within the institution among training programs, other departments, and UNICOR.

§ 544.56 Exploratory training.

In addition to the occupational education programs listed in this rule, each Bureau of Prisons institution shall, where practicable, provide Exploratory Training to interested inmates. Exploratory Training is a study of occupations and industries for the purpose of providing the student with a general knowledge of the world of work, rather than specific skill development.

[FR Doc. 88–6729 Filed 3–28–88; 8:45 am]

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Federal Register

Tuesday
March 29, 1988

Part V

Environmental Protection Agency

40 CFR Part 749

Proposed Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 749

[OPTS-61012; AD-FRL-3246-8]

Proposed Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The proposed rule would prohibit the use of hexavalent chromium (Cr^{+6})-based water treatment chemicals in comfort cooling towers (CCT's) and the distribution in commerce of these chemicals for use in CCT's. Persons who distribute in commerce water treatment chemicals containing Cr^{+6} compounds for industrial cooling tower use would be required to label the containers of these chemicals. They also would be required to keep records of water treatment chemical shipments to CCT users and Cr^{+6}-based water treatment chemical shipments to industrial cooling tower users for a period of 2 years from the date of the shipment. The proposed rule is under authority of section 6 of the Toxic Substances Control Act (TSCA). This rule is based on the Administrator's determination that use of Cr^{+6} chemicals in CCT's presents an unreasonable risk of injury to human health and that TSCA is the most effective means to control this risk. The EPA has determined that Cr^{+6} compounds are potent human carcinogens.

DATES: Written comments in response to this notice must be postmarked on or before May 31, 1988. A public hearing will be held on this proposed rule June 13, 1988, beginning at 10:00 a.m. only if a written request for such a hearing is received by May 13, 1988. In addition, persons making a request for a public hearing should call Ms. Ann Eleanor at (919) 541-5578 by May 13, 1988. Requests to participate in the public hearing must be postmarked by May 23, 1988. For further information regarding the public hearing, see Unit XI of this preample.

ADDRESSES: *Comments.* Written comments should be submitted in triplicate to: OTS Document Control Officer (TS-790), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: Document Processing Center.

Comments should include the Docket Control Number OPTS-61012. For further information regarding the submission of comments containing confidential business information, see Unit XII of this preamble.

Public Hearing. Requests to hold a public hearing must be submitted in writing to the address identified above. In addition, persons making such a request should call Ms. Ann Eleanor at (919) 541-5578 and inform her of the request. Requests to participate in the public hearing also must be submitted in writing to the address identified above. If a public hearing is requested, it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina. For further information regarding the public hearing, see Unit XI of this preamble.

Background Information. The "Health Assessment Document for Chromium" (EPA 600/8-83-014F) and the "Background Information Document for Chromium Emissions From Comfort Cooling Towers" (EPA-450/3-87-010a) may be viewed in the docket or obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777.

Docket. Docket Number OPTS 61012 contains supporting information used in developing the proposed rule, and will include comments on the proposed rule and additional supporting information. A public version of the docket is available for inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. G004, NE Mall, at the Washington, DC, address given above. A reasonable fee may be charged for copying. (See Unit XIII for a description of information currently in the rulemaking record.)

FOR FURTHER INFORMATION CONTACT: For information concerning the policy aspects of the proposed rule, contact Ms. Debbie W. Stackhouse, Standards Development Branch, Emission Standards Division (ESD) (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5258. For information regarding the technical basis and the background information document, contact Mr. Ronald E. Myers, Industrial Studies Branch, ESD, telephone number (919) 541-5407, at the same address. For information concerning the public hearing, contact Ms. Ann Eleanor, Standards Development Branch, ESD, telephone number (919) 541-5578, at the same address. For information concerning the health and exposure analyses associated with the rule, contact Ms. Karen L. Blanchard, Pollutant Assessment Branch, ESD (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5503.

SUPPLEMENTARY INFORMATION: This preamble first summarizes the proposed rule to control Cr^{+6} emissions from CCT's. Next, the preamble describes the regulatory authority and history of the project. The preamble also summarizes the relevant comments on notices published in the **Federal Register** and EPA's responses. It then presents the basis for EPA's decision to regulate Cr^{+6} emissions from CCT's, the decision to regulate under TSCA, and the impacts on other relevant regulations. The language of the proposed rule is described briefly; information on the public hearing and handling of confidential documents is presented; the information in the rulemaking record is described; and administrative considerations including Executive Order (E.O.) 12291, the Regulatory Flexibility Act (RFA), and the Paperwork Reduction Act are discussed.

I. Summary of Proposed Rule

A. Prohibitions Against Distribution and Use

The proposd rule would prohibit the commercial use of Cr^{+6}-based water treatment chemicals in existing and new CCT's. The rule also would prohibit the distribution of Cr^{+6}-based water treatment chemicals for use in CCT's. In addition, water treatment chemical vendors (i.e., persons who distribute in commerce Cr^{+6}-based water treatment chemicals for use in cooling towers) would be required to label those chemicals with a warning that Cr^{+6} increases the risk of lung cancer when inhaled and that use in CCT's is prohibited.

Typically, the distribution cycle for Cr^{+6} water treatment chemicals begins with the production or mining of the chromite ore. The ore is sold to processors who use the ore to produce chromium for use in a variety of processes such as making chromium chemicals, stainless steel, and refractory bricks. Water treatment chemical vendors purchase sodium dichromate from processors for use as a corrosion inhibitor. The water treatment vendors typically formulate their own water treatment programs, which, in turn, are sold to cooling tower users and others (e.g., industrial boiler users). Some small water treatment vendors may purchase formulated chemicals from processors or blenders or, occasionally, from other vendors and then sell the packages to cooling tower users and others.

The Agency believes that an alternative means of eliminating the

risks from a Cr^{+6}-based product would be to prohibit processors from including Cr^{+6} in the product. Therefore, in addition to the regulatory measures mentioned above, EPA is also considering a requirement that would prohibit the processing of Cr^{+6} into water treatment products that may be used in CCT's. The EPA does not expect that this requirement would significantly affect the business operations of processors/vendors who produce Cr^{+6}-based water treatment packages for uses other than in cooling towers. The EPA believes that the markets for these products are distinct and processors/vendors who prepare the products can comply with this requirement by making appropriate adjustments in their market involving CCT users. Also, these processors/vendors would be required to label their products that contain chromium to indicate that use of Cr^{+6}-based water treatment chemicals in CCT's is prohibited.

The EPA solicits comments on these approaches. Comments that address the three following areas would be particularly useful: (1) The impact of these requirements on vendors/processors with respect to producing Cr^{+6}-based water treatment products for cooling tower users, (2) typical preparation and distribution processes of Cr^{+6}-based water treatment chemicals, and (3) alternative methods for EPA to prohibit the introduction of Cr^{+6} into products that could be used in CCT's.

B. Labeling, Recordkeeping, and Reporting

The labeling requirement being proposed today would apply only to water treatment chemical vendors. It would not apply to the producers and processors of chromium ore provided they do not sell water treatment chemicals directly to cooling tower owners/operators. The water treatment vendors would be required to retain records of all shipments of water treatment chemicals for use in CCT's and all shipments of Cr^{+6}-based water treatment chemicals for use in industrial cooling towers for a period of 2 years from the date of shipment. The water treatment vendors would be required to keep the records at their company's headquarters location. In addition, the water treatment vendors would be required to provide an initial report identifying their headquarters and shipment office locations through which their water treatment chemicals are sold. An updated list would be required when changes in the headquarters or shipment office information occur. The rule would be effective 45 days after promulgation for water treatment chemical vendors and 135 days after promulgation for CCT owners/operators to allow them to exhaust any existing inventories of Cr^{+6}-based water treatment chemicals.

II. Authority

Under section 6(a) of TSCA, EPA is authorized to impose regulatory controls if the Agency finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents or will present an unreasonable risk of injury to human health or the environment. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur from the chemical substance under consideration against the social and economic costs to society of placing restrictions on the substance.

If the EPA Administrator determines that an unreasonable risk exists, one or more of several regulatory measures may be applied to the extent necessary to protect adequately against the risk. Those measures include: prohibiting or limiting the manufacture, processing, or distribution in commerce; labeling; prohibiting or otherwise regulating any manner or method of commercial use or disposal; requiring the revision of quality control procedures; and requiring that chemical manufacturers notify the public of unreasonable risk associated with a chemical substance. The EPA Administrator is required by TSCA to apply the least burdensome requirements to protect adequately against the risk. Section 9 of TSCA requires EPA to review other authorities administered by EPA or by other agencies to determine whether the unreasonable risk could be eliminated or reduced to a sufficient extent by action under those authorities.

The Agency understands that some water treatment chemical products sold for use in CCT's are registered pesticide formulations that contain Cr^{+6}. The Cr^{+6} is considered an "inert" ingredient in the pesticide mixture because it has no intended pesticidal functions in cooling tower water. These water treatment chemical products are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which requires, among other things, that they be registered with EPA. Under FIFRA, EPA has authority to take action to cancel a pesticide registration if EPA finds that use of the pesticide causes unreasonable adverse effects on the environment.

The EPA proposes to take actions under FIFRA, as an adjunct to the proposed TSCA rule, to eliminate any unreasonable adverse effects caused by the use of Cr^{+6} in CCT's. The Agency will ask pesticide registrants who manufacture Cr^{+6}-based water treatment products to remove the Cr^{+6} or to amend the labels to include language prohibiting the product's use in CCT's. Registrants who fail to comply with these requests voluntarily could have their registrations canceled by EPA. Also, to address future registrations involving Cr^{+6} as an inert ingredient, the Agency is considering including Cr^{+6} in category No. 1 on EPA's list of inert ingredients of concern. Sodium dichromate (Chemical Abstract Service [CAS] No. 10588-01-9) is already included in category No. 1. (See 52 FR 13305 et seq., April 22, 1987.)

As discussed above, this proposed rule would impose limited recordkeeping and reporting requirements on persons who distribute in commerce any water treatment chemicals for use in CCT's and on persons who distribute in commerce hexavalent chromium-based water treatment chemicals for use in industrial cooling towers. Many of these distributors are likely to be persons who manufacture or process the water treatment chemicals in question, i.e., produce the individual ingredients and/or formulate them into a mixture which is sold as a water treatment chemical. Others may be strictly engaged in distribution of the water treatment chemicals without any manufacturing or processing activities. The EPA is proposing these requirements to ensure compliance with the prohibition on distribution of hexavalent chromium-based water treatment chemicals for use in CCT's, the labeling requirements for those chemicals, and the prohibition on use of such chemicals in CCT's. These requirements will be necessary for effective enforcement of the rule.

Section 8(a) of TSCA gives EPA authority to require persons who manufacture or process chemical substances and mixtures to maintain records and submit reports for many purposes, including records and reports necessary for effective enforcement of TSCA requirements. Small manufacturers and processors are generally exempt from recordkeeping and reporting under section 8(a). However, section 8(a)(3)(ii)(I) provides that, when, as here, the chemical substance or mixture involved is the subject of a rule proposed or promulgated under section 6, small manufacturers and processors also can be required to report and keep records.

The EPA also has authority under section 6 of TSCA to require reporting

and recordkeeping related to the other regulatory requirements imposed by EPA under section 6. This is particularly important where, as here, such records and reports are necessary for effective enforcement of the section 6 rule and would apply to persons who are not covered by section 8(a), i.e., those who are not manufacturers or processors. In this case, section 6 provides the authority to apply the recordkeeping and reporting requirements to distributors of water treatment chemicals who are not also manufacturers or processors of such chemicals subject to section 8(a). The EPA has used this section 6 recordkeeping and reporting authority previously in its polychlorinated biphenyl and asbestos rules promulgated under TSCA section 6 in 40 CFR Parts 761 and 763.

III. Regulatory History

Chromium compounds are prevalent in the environment in two oxidation states. Trivalent chromium (Cr^{+3}) is a natural constituent of the earth's crust and is a key component of the human glucose tolerance factor, which is a necessary complex for metabolizing glucose in the body. Hexavalent chromium is usually manmade and is considered the more toxic of the two forms.

Because of the potential adverse health effects associated with Cr^{+6} exposure, EPA initiated a review to determine the risks to public health from exposure to chromium in the ambient air. As part of this review, a comprehensive "Health Assessment Document for Chromium" (HAD) was prepared that summarizes the scientific literature on health effects of chromium and emphasizes the inhalation route of exposure. The HAD was reviewed at a public meeting of the Environmental Health Committee of EPA's Science Advisory Board (SAB) on November 1, 1983. The SAB concurred with the major findings of the HAD including the finding that there is sufficient evidence from the combined human and animal data to consider Cr^{+6} compounds to be carcinogenic in humans. A final HAD was published in August 1984.

Numerous epidemiological studies of workers have shown an association between inhalation of Cr^{+6} and lung cancer. The findings of these studies alone do not permit a determination of which oxidation state resulted in an increased risk of cancer because the workers usually were exposed to mixtures of both Cr^{+3} and Cr^{+6}. The HAD notes that Cr^{+6} is believed to be the form responsible for the carcinogenic responses because of its generally positive results in a number of animal bioassays and mutagenicity tests. More specifically, the HAD concluded that (using the International Agency for Research on Cancer Scheme) "the level of carcinogenic evidence available for the combined animal and human data would place Cr^{+6} compounds into Group 1, meaning that there is decisive evidence for the human carcinogenicity of those compounds." Under the recently adopted EPA guidelines (51 FR 33992, September 24, 1986) for carcinogenic risk assessment, Cr^{+6} compounds would be classified as Group A, meaning that they would be classified as human carcinogens because there is sufficient evidence to support a causal association between exposure to the agents and cancer. The HAD included an estimate of potency called a "unit risk factor" for Cr^{+6} of 1.2×10^{-2}. This means that if a person were continuously exposed to 1 microgram of Cr^{+6} per cubic meter of air ($\mu g/m^3$) for 70 years, the probability of getting cancer would not exceed 1.2 in 100.

The HAD also concluded that the data are inadequate to classify the carcinogenicity of Cr^{+3} compounds. The Cr^{+3} compounds have not been studied as extensively, and the studies that have been done are inadequate to judge the carcinogenic potential. The EPA's Office of Research and Development is engaged in an ongoing evaluation of epidemiological data to examine further the potential carcinogenicity of Cr^{+3} compounds.

On June 10, 1985, EPA published a notice of intent to list either total chromium or Cr^{+6} as a hazardous air pollutant under section 112 of the Clean Air Act (CAA) (50 FR 24317). This notice presented a summary of the HAD findings and described the preliminary estimated risks from exposure to chromium air emissions. The notice indicated that EPA would decide whether to add either total chromium or Cr^{+6} to the list of hazardous air pollutants only after studying possible techniques that might be used to control emissions of chromium compounds and assessing the public health risks to determine if Federal standards are warranted. As further discussed below, this proposal does not affect that decision.

Since the notice of intent to list was published in the **Federal Register**, EPA has been conducting in-depth studies of the quantity of Cr^{+6} and total chromium being emitted, possible control techniques, and the possible cancer risk reduction those control techniques could achieve for various source categories. The source categories under investigation are: chromium plating, refractory production, chromium chemicals production, specialty steel production, municipal solid waste incineration, sewage sludge incineration, ferrochrome production, cement production, chromite ore refining, coal and oil combustion, and cooling towers. As stated in the notice of intent to list, EPA is continuing its evaluation of the need for listing chromium (either hexavalent or total) and for subsequent national emission standards for hazardous air pollutants for electroplating and for industrial cooling towers (as described elsewhere in this proposed rule). The results of EPA's investigation of the need for regulating Cr^{+6} emissions from CCT's are the subject of this proposed rule. Decisions on whether to proceed further with the standards development process for the other source categories identified above, and any decisions under section 112 of the CAA, will be made after further in-depth studies of the source categories are available.

In further investigations of cooling towers, EPA identified CCT's as a class of cooling towers with a potentially high annual incidence of lung cancer for which there is sufficient information available to make a determination on appropriate control techniques. The CCT source category is defined to include cooling towers that exclusively serve and are an integral part of heating, ventilation, and air conditioning (HVAC) or refrigeration systems. Cooling towers that are used to cool water for removal of heat from an industrial process are not included in this source category. The industrial process cooling tower systems are different from CCT systems in size, operating parameters such as cooling range and inlet water temperature, and heat exchanger construction materials. The higher temperatures in industrial processes promote more corrosion, and the most common heat exchanger construction material, carbon steel, is less resistant to corrosion than the copper used in heat exchangers in CCT systems. Thus, the Agency determined that it was appropriate to treat CCT's and industrial process cooling towers as separate source categories. The Agency is continuing to investigate industrial cooling towers in a separate study.

On September 15, 1986, EPA issued a notice of solicitation of information on potential standards to reduce public exposure to Cr^{+6} air emissions from CCT's (51 FR 32668). The notice presented preliminary information and solicited information on the potential standards for CCT's. The preliminary

information also was presented at a public meeting of the National Air Pollution Control Techniques Advisory Committee on September 17, 1986.

In addition to EPA's effort on Cr^{+6} air emissions from CCT's and industrial cooling towers described above, EPA published final water effluent guidelines for chromium discharged from cooling towers at steam electric power plants (47 FR 52290, November 19, 1982) and petroleum refineries (47 FR 46434, October 18, 1982). The power plant regulations limit the discharge of pollutants into navigable waters and into publicly owned treatment works (POTW's) by existing and new sources at steam electric power plants under authority of the Clean Water Act (CWA). The regulations relate to the discharge of toxic and other chemical pollutants. The refinery regulations limit the discharge of pollutants into navigable waters and into POTW's by existing and new sources in the petroleum refining industry under authority of the CWA. These guidelines and general environment concerns have encouraged all but two electric utility plants to discontinue use of Cr^{+6}-based water treatment chemicals in cooling towers. Most refineries continue to use Cr^{+6} in industrial process towers and CCT's.

Many States have wastewater discharge regulations that limit the amount of chromium that may be discharged to surface waters from any type of source, and many POTW's also regulate discharges of chromium to the POTW. Although some of these State regulations are fairly stringent, none totally prohibit the discharge of chromium-laden wastewater. No State regulations directly affect air emissions of Cr^{+6} from cooling towers although there are States that have ambient air quality standards for chromium (e.g., Maine) or hazardous air pollutant regulations for some chromium compounds (e.g., Connecticut).

At the present time, no information has been found on chromium environmental regulations in countries other than the United States.

IV. Issues Raised in Relevant Comments Received on Intent to List Chromium as a Hazardous Air Pollutant

The EPA received a number of public comments on the intent to list **Federal Register** notice (50 FR 24317) described in Unit III of this preamble. All of the comments received in response to the intent to list notice that are relevant to this rulemaking pertain to the health basis upon which EPA's conclusions were drawn. Discussion of these relevant comments below is for purposes of this section 6 rulemaking only. The EPA intends to respond to all of the comments on the intent to list notice when a final listing decision is made.

Some commenters indicated that, based on data from animal studies, only slightly soluble to insoluble Cr^{+6} compounds should be considered carcinogenic. Sodium dichromate, the most commonly used chromium compound for corrosion inhibition, is soluble. The EPA's response to these comments is that evidence is available showing that sodium dichromate produced lung tumors in Sprague-Dawley rats via intratracheal application, as reported in the HAD (Steinhoff et al., "Experimental Pathology." 1986. V. 30, p. 129–141). Thus, the hypothesis cannot be substantiated that only slightly soluble chromates produce a carcinogenic effect and that highly soluble chromates do not.

Another commenter stated that there is a threshold for the carcinogenic action of chromium, and, thus, EPA should not have applied the no threshold or "one-hit" theory of carcinogenesis in estimating the potency. The commenter's argument about a threshold is based on an intratracheal study (Steinhoff, et al.) in which a single administration of sodium dichromate induced a carcinogenic response in rats but failed to induce a response when the same weekly dose was given over 5 days. Although it is possible that the difference in tumor response under the two exposure patterns may suggest the existence of a threshold, it could also suggest that the difference in tumor response is due to the difference in pharmacokinetics such as rate of distribution to lung tissue. For these animal data to be useful in risk assessment, information on pharmacokinetic parameters relating inhalation and intratracheal routes of exposure are required. The EPA did not find that the data are strong enough to establish that the mechanism of action is via a threshold. The fact that the Cr^{+6} compounds are highly mutagenic supports the Agency's position.

An estimate of the relative potency of chromium in comparison to other suspected carcinogens was derived from an occupational study by Mancuso ("International Conference on Heavy Metals in the Environment," Toronto, Ontario, Canada. October 27–31, 1975. pp. 343–356). Several commenters indicated that EPA vastly overestimated the potency of Cr^{+6} by its assumptions on exposure in the Mancuso study, which was used to derive the unit risk estimate. Other commenters suggested that the Mancuso study is not appropriate to use for a number of different reasons. The Agency determined that the Mancuso study is the most appropriate for quantitative risk estimation because it presents lung cancer incidence by both dose and age. The risk estimate calculated from other studies generally supports that calculated from the Mancuso study. Concerning the estimation of exposure, the information used by Mancuso was derived from an industrial hygiene study conducted in 1949. In this study, time-weighted averages of exposure to insoluble, soluble, and total chromium per cubic meter were calculated for each worker and for each worker in every department. Mancuso then calculated an estimate of exposure by duration for each member of the 1931 to 1937 cohort. In 1949, after the study had been conducted, the company initiated a program to reduce exposure. Although there is some information to suggest exposures to chromium may have been somewhat higher prior to 1949, no concerted effort was made to reduce employee exposure until late in 1949. The EPA considers Mancuso's data to be a reasonable approximation of the chromium to which the workers in the study cohort were exposed during their entire working history. Although there is the possibility of a slight underestimation of exposure prior to 1949, which would decrease somewhat the potency factor, there are other factors that may have resulted in an increased potency estimate.

For more detailed information on EPA's response to the intent to list public comments, see docket number A–84–43 located at: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

V. Summary of and Response to Comments Received on Notice of Solicitation of Information for Chromium Emissions From Comfort Cooling Towers

Three commenters responded to the notice of solicitation of information (51 FR 32668) described in Unit III of this preamble. The points made in these comments are organized by topic.

One commenter suggested that EPA take affirmative action to examine environmental and health impacts of nonchromium corrosion inhibitors. Another commenter stated that nonchromium alternative chemicals and required biocides may be more hazardous than CR^{+6}-based water treatment chemicals.

The EPA has reviewed the literature concerning the hazardous nature of nonchromate water treatment chemical programs. The results of this review are summarized in Unit VI.C.2. below. In all cases, the nonchromate substitutes are considered to be less hazardous than the chromates.

One commenter stated that the cost of nonchromate water treatment programs may be understated. This commenter also stated that, if biocides that are compatible with nonchromates are too costly, biocide use will cease, and disease will increase.

As described in Unit VI.E.1.a. below, EPA has obtained additional cost information from water treatment chemical vendors and from CCT owners/operators. These sources indicate that the preliminary cost estimates presented in the notice of solicitation of information are high. The cost of non-CR^{+6}-based water treatment programs, which include corrosion inhibitors, dispersants, antiscalants, and biocides, are reasonable. Biocides are included to prevent excessive growth of algae and other microorganisms on the internal tower and heat exchanger surfaces. Such growth can result in decreased cooling efficiency and increased corrosion, both of which cannot be tolerated in most CCT systems. In addition, an increase in microbiological growth caused by discontinuing the use of biocides could also result in health problems. Thus, it is unlikely that CCT owners/operators would discontinue biocide use because such an action could result in liability claims for any resulting health problems.

One commenter stated that the requirements for CCT's should not be prescribed automatically for industrial cooling towers because there are differences in the cooling system conditions.

As explained in Unit VI.A.1., EPA is aware of differences between CCT's and industrial process cooling towers. As a result, this proposed rule does not cover industrial cooling towers. The Agency has instituted a separate standards development project for industrial towers.

One commenter supported a prohibition on chromium use in cooling towers. This commenter believes molybdenum-based alternatives provide equivalent or superior corrosion inhibition with significantly less environmental harm.

The EPA has determined that there are many nonchromate water treatment chemical programs (including molybdates) that provide good corrosion protection and are less hazardous than chromate-based programs. The basis for this determination is described in Unit VI.C.2.

VI. Regulatory Assessment

Under section 6(c)(1) of TSCA, EPA must consider the following factors in determining whether a chemical substance or mixture presents an unreasonable risk:

1. The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture;

2. The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;

3. The benefits of such substance or mixture for various uses and the availability of substitutes for such uses; and

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

In the following presentation, Unit VI.A. is a discussion of the uses and benefits of Cr^{+6}-based water treatment chemicals in CCT's and possible substitutes. Unit VI.B. covers the health effects, exposure estimates, and risk estimates related to the use of Cr^{+6} in CCT's. Unit VI.C. is an analysis of the availability and hazards of substitutes. Unit VI.D. discusses other environmental impacts of the proposed rule. Unit VI.E. presents an analysis of regulatory options (including their costs), describes EPA's proposed course of action, and discusses the economic consequences of adopting the proposed action. Finally, Unit VII is a summary of the findings for each of the factors described above that must be considered under section 6(c)(1) of TSCA.

A. Use and Benefits of Chromium in CCT's

1. Emission Source

Cooling towers are devices that use fans (mechanical draft) or natural draft to draw or force ambient air through the tower to cool warm water. For most cooling towers, approximately 80 percent of the cooling occurs from evaporation of water as the air flowing through the tower contacts water cascading from the top to the bottom of the tower. Comfort cooling towers, which exclusively serve HVAC and refrigeration systems, are mechanical-draft towers designed with induced- or forced-draft airflow. The direction of the airflow through a mechanical-draft tower is either crossflow or counterflow. The major CCT components include the fan(s) to create airflow, the fill to break up the water to increase the surface area for evaporation, a water distribution deck or header, a drift eliminator to reduce drift (which is water droplets entrained in the air and emitted from the fan stack), the structural frame, and a cold water basin. The HVAC system usually includes the CCT and a heat exchanger and/or chiller.

Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588-01-9), or other corrosion inhibitors often are added to cooling tower water to protect the metal components of the heat exchanger, chiller, and cooling tower from corrosion. Corrosion is the oxidation of a metal by some oxidizing agent in the environment. Conditions that increase the conductivity of the water (e.g., high dissolved solids content or high temperature) increase the rate of corrosion. Corrosion can be retarded but not totally prevented, and the rate of corrosion that is acceptable varies among systems. Inhibitors are added primarily to protect the heat transfer surfaces from corrosion by retarding the rate at which corrosion occurs. These surfaces are the most critical metal components in the system.

Chemicals added to the cooling tower water are either discharged into a wastewater system as blowdown or emitted into the air in droplets of water called "drift" or as dry salt particles. In addition to the corrosion inhibitors, other chemicals are added to the recirculating cooling water in a tower to control the rate of scaling and fouling and to control the growth of microorganisms in both the cooling tower and the heat exchangers. As evaporation occurs during cooling, the chemical constitutents of the water become concentrated, and the concentrations of suspended and dissolved solids rise. A percentage of the recirculating water is intentionally discharged (blowdown) to maintain acceptable concentrations of suspended and dissolved solids. Fresh water is added to make up for the losses resulting from drift, evaporation, and blowdown.

There are two broad categories of cooling towers, comfort and industrial. Comfort cooling towers are used primarily for air conditioning or refrigeration. Industrial process cooling towers are used to cool process fluids in industrial production units. The EPA is evaluating industrial towers separately because the conditions under which industrial towers operate make the

control of corrosion in an industrial cooling tower system more complex and difficult. The following conditions distinguish these towers and make the control of Cr^{+6} emissions from CCT's less difficult:

a. A lower potential for corrosion exists in CCT's because lower water temperatures typically are encountered;

b. The utilization rate of CCT's is lower, which results in fewer air emissions;

c. The CCT heat exchangers are constructed of copper, which is less susceptible to corrosive attack than the mild steel typically used in industrial cooling tower heat exchangers; and

d. Little opportunity exists in CCT's for upsets in the chemical treatment programs from contamination of the cooling water in contrast to industrial towers, which may be contaminated with process fluids by heat exchanger leakage.

As noted previously, an assessment of the magnitude of chromium air emissions from industrial towers and an evaluation of possible methods of controlling chromium emissions from these towers is being performed in a separate study.

2. Need for Chromate Use

Hexavalent chromium-based water treatment chemicals, generally in the form of sodium dichromate, are effective and relatively inexpensive corrosion inhibitors that are added to the cooling water in 10 to 25 percent of the CCT's and, thus, are emitted as drift/particular or lost in the blowdown. These CCT's continue to use sodium dichromate because chromates historically have provided the best protection against corrosion for the least amount of money and effort. Minimal monitoring and control of pH and corrosion inhibitor concentration are required when Cr^{+6}-based water treatment chemicals are used. However, nonchromium water treatment chemical substitutes such as phosphates (which are the most prevalent and least expensive), triazoles, and molybdates (which are the most expensive) are effective as corrosion inhibitors and are readily available. In fact, several nonchromium water treatment programs that provide adequate corrosion protection are marketed currently for CCT's by the same vendors that sell the Cr^{+6}-based water treatment programs. Furthermore, as discussed in Unit VI.A.4.c. below, nonchromium alternatives are used currently in 75 to 90 percent of all CCT's.

3. Source Category Population

Major users of CCT's include hospitals, hotels, educational facilities, office buildings, and retail shopping malls. Estimates from the 2 largest manufacturers of cooling towers (each represents a 40 percent market share) indicate that the nationwide population of CCT's is 250,000. Of these towers, 10 to 25 percent or 25,000 to 62,500 towers are estimated by water treatment vendors to use Cr^{+6}-based water treatment chemicals. For the purposes of the impact analyses, 15 percent or 37,500 are estimated to use Cr^{+6}-based chemicals. Comfort cooling towers are used in all States in the United States, primarily in urban areas. Hexavalent chromium use in CCT's occurs throughout the nation.

4. Control Options

The following techniques for reducing Cr^{+6} emissions from CTT's were considered: (a) Eliminating Cr^{+6}-based chemicals from water treatment programs and (b) using high-efficiency drift eliminators.

a. *Nonchromate water treatment chemicals.* Cooling tower water treatment programs can include corrosion inhibitors, biocides, antiscalants, and dispersants. To obtain the best results, nonchromate corrosion inhibitors usually require automated monitoring and control of pH and corrosion inhibitor concentration. Nonchromate programs currently in use include phosphates (which are the type of nonchromate inhibitor used most often), molybdates, and various organic formulations. When phosphates are used, microbiological control requires more care, primarily because phosphates are microbiological nutrients. Removal of biocides could result in increased microbiological growth that could also lead to health problems. In addition, some of the other nonchromate inhibitors are not compatible with chlorine and must be used with nonchlorine biocides that require more careful monitoring than usually is required with chlorine. Thus, microbiological control should be automated also when using nonchromate treatment programs.

Although Cr^{+6}-based programs traditionally have provided the best corrosion protection, the nonchromate formulations currently can provide at least equivalent corrosion protection. Actual experience with CCT's at a large research center indicates that equal or better corrosion protection is provided when the control parameters of a phosphate-based program are automatically monitored and maintained. Also, switching from chromates to phosphates at this research center did not require a change in the preventive maintenance schedule for the towers.

At other CCT sites where chromates have been discontinued in favor of nonchromates, quantitative cost and preventive maintenance information has not been available. In general, CCT operators have stated that equivalent protection from corrosion has been achieved. However, some comments have been received that mention increased chemical cost; increased monitoring including automatic controllers for chemical feed, makeup water, and blowdown; and increased use of biocides, antiscalants, and dispersants. It should be noted that switching to nonchromate programs will not inhibit technological innovation in treatment programs, tower construction, or internal tower components.

b. *Drift eliminators.* Historically, the purpose of drift reduction has been to alleviate nuisance problems related to deposition of drift on nearby buildings or personal property such as automobiles. Installation of drift eliminators is the most common way to reduce drift. Low-efficiency drift eliminators include herringbone, waveform (sinusoidal), and some cellular designs. High-efficiency drift eliminators include some cellular and sinusodial designs. All drift eliminators work on the principle of inducing impaction to reduce the escape of water droplets. The cellular designs that achieve the higher efficiencies use complex configurations and are constructed with numerous, closely spaced airflow passages. Regardless of the drift eliminator design, droplet impaction is a function of droplet size such that smaller droplets are not caught as effectively as larger droplets.

Drift eliminator manufacturers indicate that higher efficiency drift eliminators can remove up to 80 to 90 percent of the drift discharged from lower efficiency drift eliminators. These drift eliminator efficiencies are based on pilot-scale cooling tower tests using test methods that have not been verified by EPA. Emission tests of drift eliminators performed by EPA at three facilities indicate that the average nationwide control achieved by high-efficiency drift eliminators is 80 percent more effective than that achieved by low-efficiency drift eliminators. Of the two cooling towers tested by EPA with high-efficiency drift eliminators, the average emission rate from the tower with the highest average emissions was 0.3×10^{-3} milligram of Cr^{+6} per milligram of recirculating Cr^{+6} (mg Cr^{+6}/mg Cr^{+6}) (0.3×10^{-3} pound of Cr^{+6} per pound of recirculating Cr^{+6} [lb Cr^{+6}/lb Cr^{+6}]). The

EPA emission tests of the two cooling towers with lower efficiency herringbone-design drift eliminators provide an estimate of average national emissions of 1.5×10^{-3} mg Cr^{+6}/mg Cr^{+6} (1.5×10^{-3} lb Cr^{+6}/lb Cr^{+6}). The individual emission test runs used to determine the average emissions for both high- and low-efficiency drift eliminators were highly variable, which indicates uncertainty in the calculated difference between the two average levels of emissions.

Vendors have indicated that most existing CCT's are not equipped with high-efficiency drift eliminators. One cooling tower manufacturer with 40 percent of the market indicates that its older towers do not include high-efficiency drift eliminators, although they are used in new CCT's. Other manufacturers do not routinely install high-efficiency eliminators.

Colling tower manufacturers have indicated that high-efficiency drift eliminators can be retrofitted in all counterflow towers and in about 50 percent of the crossflow towers. These manufacturers also have indicated that about 50 percent of all CCT's are counterflow towers and about 50 percent are crossflow towers. It is not possible to replace the low-efficieny drift eliminator in the 50 percent of the crossflow towers because the fill and drift eliminator sections are constructed as a unit from a continuous piece of polyvinyl chloride (PVC). A second drift eliminator, however, could be installed above the existing drift eliminator in about 90 percent of these towers. This procedure would increase the electricity requirements by about 15 percent if the same airflow is maintained. Also, extensive electrical and mechanical modifications including installation of a larger motor may be required by 50 to 75 percent of the towers to accommodate the increased electrical load. The remaining 10 percent of the towers constructed with integral fill and drift eliminators (2.5 percent of all towers) do not have the necessary clearance to have a second drift eliminator installed, and these towers would have to be rebuilt. Rather than retrofit, the owners/operators with towers that would require extensive modification or rebuilding (25 percent of all CCT's presently using Cr^{+6}-based water treatment chemicals) probably would switch to nonchromate treatment.

c. *Comparison of control option effectiveness.* Based on an analysis of the nonchromium control option, it was determined that prohibiting the use of Cr^{+6}-based corrosion inhibitors in CCT's is reasonable. Substitute water treatment chemicals are effective corrosion inhibitors and are readily available. This option results in the maximum level of environmental protection. At best, to require installation of high-efficiency drift eliminators would not achieve the same level of environmental protection as would the prohibition of Cr^{+6} use. Thus, prohibiting the use of Cr^{+6}-based water treatment chemicals in CCT's is the most effective control option.

Although some CCT's may use no corrosion inhibitors, the majority (75 to 90 percent) of CCT's use nonchromium alternatives. Present infomation indicates that these nonchromium systems do not experience significant adverse impacts from corrosion. Also, cooling tower and water treatment vendors have stated that switching from chromium to nonchromium corrosion inhibitors is not expected to cause any operation or maintenance problems with the chiller components (heat exchanger) of the cooling system. Automated monitoring and control systems are readily available to control chemical feed (including corrosion inhibitors, biocides, antiscalants, and dispersants), makeup, and blowdown.

As discussed in Unit VI.A.4.b., a high-efficiency drift eliminator could achieve an average 80 percent reduction in airborne emissions of chromium from cooling towers over a low-efficiency design. Furthermore, to implement an effective standard based on the use of high-efficiency drift eliminators, it would be necessary to establish some combination of equipment specifications, performance testing, periodic equipment inspection, and product certification in addition to an annual inspection of the drift eliminator.

At the present time, there is no standard high-efficiency drift eliminator design, and it is unclear how emission rates or efficiencies of these drift eliminators are related to their design. Therefore, the information is not available currently to specify design requirements for a high-efficiency drift eliminator.

Performance testing of individual CCT's is not considered reasonable because of the cost of testing, which is estimated to be $10,000 to $20,000 per tower. This cost is high relative to the installed cost of high-efficiency drift eliminators. In addition, further work is needed to determine the precision and accuracy of a test method to use for performance testing.

Development and implementation of an inspection and/or certification program for CCT's would be costly to EPA and industry and would be time consuming because of the large number of sources that are estimated to use Cr^{+6}. The Agency also would need to develop a reference test method, develop a standard set of certification testing conditions related to actual operating conditions of a variety of types of cooling towers, and identify critical installation criteria to be specified in the installation instructions of the drift eliminator.

For these reasons, development of a rule based on the use of high-efficiency drift eliminators is not technically feasible at this time. The EPA solicits information on the effectiveness of high-efficiency drift eliminators, design criteria, test methods, and certification procedures that could be used to determine the performance of drift eliminators and to differentiate between designs and applications that achieve high-efficiency and those that do not.

In conclusion, the elimination of Cr^{+6} use in CCT's is a more feasible control technique than the installation of high-efficiency drift eliminators. Such an approach would eliminate CCT chromium air emissions. It also would provide additional environmental benefits over high-efficiency drift eliminators because Cr^{+6} (a water pollutant) would be eliminated in the blowdown from CCT's.

5. Emission reductions

Based on model building sizes and numbers in the United States, six model towers were developed to characterize the existing population of CCT's. Because office buildings are the most prevalent type of commercial building with CCT's, it was assumed that the model towers require a design heat load value comparable to that required for office buildings. Thus, a value of 142 watts per square meter (W/m^2) (45 British thermal units per square foot per hour [$Btu/ft^2/h$]) was used. This represents the heat load for the building plus the energy load for the compressor.

To estimate CCT Cr^{+6} emissions, typical recirculation, evaporation, and blowdown rates were developed for the model towers. It was assumed that the cooling range is 5.6°C (10°F), which is a typical temperature range for CCT's. A uniform assumption of five cycles of concentration, also typical for CCT's, was assumed for all six model towers. The number of cycles of concentration is defined as the ratio of conductivity or calcium hardness of the recirculating water to that of the makeup water. The chromate concentration in the cooling water is assumed to be 10 parts per million (ppm), the midpoint of the range of data collected. (Unless otherwise

stated, ppm is by mass.) This level of chromate corresponds to 4.5 ppm Cr^{+6}.

Preliminary data from EPA emission tests indicate that the Cr^{+6} control efficiency of high-efficiency drift eliminators over low-efficiency drift eliminators may average 80 percent for individual cooling towers. The number of CCT's using high-efficiency drift eliminators is unknown, but information from manufacturers and case studies indicates that the number is small (perhaps less than 5 percent). Therefore, Cr^{+6} emissions for the model CCT's were estimated using emission factors developed from emission tests on towers equipped with low-efficiency drift eliminators to provide a reasonable approximation of nationwide Cr^{+6} emissions. There is uncertainty associated with the representativeness of these Cr^{+6} emission factors. Therefore, the emissions are presented as a range rather than as an average value.

The actual CCT utilization rate depends on the climate at the CCT site. Emissions are produced only when the CCT fan is operating. The tower is assumed to operate on days when the average temperature is 15.6°C (60°F) or above. Utilization and emission rates were estimated by State for each of the six model towers. This resulted in a nationwide average tower utilization rate of 46 percent.

The approximately 37,500 chromate-using CCT's were distributed among the States based on population. The number of CCT's of each model unit in a given State was then multiplied by the estimated emission rate from each model unit in that State to determine the statewide Cr^{+6} emission rate. By summing emissions for all States, nationwide chromium emissions were estimated to be 7 to 206 megagrams per year (Mg/yr) (8 to 227 tons per year [tons/yr]).

B. Risk Analysis

1. Health Effects of Cr^{+6}

The HAD describes several adverse health effects associated with chromium exposure and notes that adverse effects are more often associated with Cr^{+6} than Cr^{+3} because Cr^{+6} compounds tend to cross biological membranes fairly easily and, thus, are usually absorbed more readily than Cr^{+3} compounds. Hexavalent chromium is a very potent lung carcinogen when the exposure route is by inhalation. The EPA currently believes that a level cannot be identified below which there is no increased risk of cancer. Therefore, any exposure is associated with some finite increased health risk. In addition to cancer, a number of adverse respiratory effects have been associated with inhalation of Cr^{+6}. These effects increase in severity with increasing exposure duration and concentration, starting at concentrations as low as about 1 to 2 micrograms per cubic meter ($\mu g/m^3$) for chromic acid. Many Cr^{+6} compounds are strong oxidizers, which explains their toxic properties and their role as an irritant. These additional effects include perforation of the nasal septum, irritation of the mucosa of the respiratory tract, pneumoconiosis, bronchitis, and asthma-like symptoms, although none are expected to occur at Cr^{+6} concentrations to which people are exposed from CCT's. The HAD notes that both Cr^{+6} and Cr^{+3} have been reported to result in birth defects such as cleft palate, hydrocephaly, and skeletal malformations in laboratory animals; however, these effects were observed only when the dose was so high that maternal toxicity was present also. Studies in laboratory animals also reported testicular degeneration when Cr^{+6} and Cr^{+3} were administered intraperitoneally. The routes of exposure in the reproductivity and teratological studies are unnatural; thus, relevance to environmental exposure is highly uncertain.

Because of the seriousness of lung cancer and the strength of the health evidence, lung cancer via the inhalation route of exposure is the health effect of most concern to EPA at this time. The EPA believes that the maximum Cr^{+6} concentrations to which the public would be exposed from CCT emissions are several orders of magnitude below the concentrations at which noncancer health effects are expected.

The HAD documents a number of epidemiological studies that have demonstrated an association between exposure to chromium compounds and lung cancer. Whether the association implicates Cr^{+6} alone or Cr^{+3} as well is not definitively addressed by these studies. However, these studies are convincing because a very high incidence of lung cancer was observed, the results by different investigators in different countries were consistent, a clear dose-response relationship was evident, and the tumor site (i.e., the lung) was specific. It should be noted that although chromium exposure by inhalation has been associated with an increased incidence of lung cancer, there is no direct evidence that associates exposure via ingestion with an increased risk of cancer.

2. Magnitude of Exposure to Cr^{+6}

a. *Exposure by inhalation.* Hexavalent chromium is a potent human carcinogen when the exposure occurs by inhalation. The typical annual average concentration of Cr^{+6} to which people are exposed from CCT emissions in the U.S. is estimated to range from 1.0×10^{-4} to 2.9×10^{-3} $\mu g/m^3$.

b. *Dermal exposure.* Hexavalent chromium is also a powerful dermal irritant and, at lower concentrations, is a sensitizer resulting in allergic dermatitis with varying degrees of eczema. Worker exposure primarily involves dermal contact. Little inhalation exposure occurs because the chromate generally remains in solution as a dissociated salt, and ingestion is unlikely. Acute systemic poisoning from Cr^{+6} compounds is rare although it may result from absorption through broken skin. The kidney may be a target organ for toxicity when dermal exposures to Cr^{+6} are high.

A worst-case scenario for worker exposure to chromate solution used in CCT's would be for an operator who is not wearing gloves to open a valve connected to a drum of solution, fill a pail with solution, and then pour the contents of the pail directly into the tower basin. The worker could be exposed by incidental contact with the solution. Assuming a concentration of chromate in the solution of 5 to 65 percent, the dermal exposure to chromate could range from 65 mg per day (d) (1.4×10^{-4} lb/d) to 2,500 mg/d (55×10^{-4} lb/d). However, because the trend in recent years has been to switch from manual to automated control of the feed pumps, little or no dermal exposure has resulted. Because the concentration of chromate in the water is low, worker exposure to chromate during sampling is negligible.

3. Human Risk

a. *Risk management.* Section 6 of TSCA requires that if the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of these activities, presents or will present an unreasonable risk of injury to health or the environment, the Administrator must regulate such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirement. Section 2 of TSCA directs the Administrator to consider the environmental, economic, and social impacts of any regulation under TSCA.

At present, EPA has taken the position, shared by other Federal regulatory agencies, that there is no threshold level below which a

carcinogen poses no risk to public health. Consequently, to control a carcinogen so that it poses absolutely no health risk would require a rule permitting no emissions. Implementation of such a rule, in many cases, may be beyond the technological or financial capacity of the affected industry. However, in regulating Cr^{+6} emissions from CCT's, it is technologically and economically feasible to reduce to zero Cr^{+6} emissions to air and Cr^{+6} discharge to sewage treatment facilities or surface water.

The EPA developed the proposed section 6 rule prohibiting the use of Cr^{+6} in CCT's or distribution in commerce of Cr^{+6} for use in CCT's based on risk assessment and risk management techniques. The Agency evaluated the health risks posed by the source category, taking into account future or ongoing emission reductions from other regulatory actions. Next, EPA determined the availability of further reductions and estimated the risk reductions and economic costs of each of the regulatory options. Finally, the least burdensome alternative that protects adequately against the risk was selected from among the options on the basis of weight of evidence of carcinogenicity; the magnitude of exposure of people and the environment; the availability of control technology and/or substitutes; the impact on existing regulations; the residual risks remaining after the application of a control option; the costs of further control; and the societal, economic, environmental impacts of regulation.

b. *Modeling.* The Agency selected the Human Exposure Model (HEM) to estimate the risk to public health from Cr^{+6} emissions from CCT's. The HEM is capable of producing quantitative estimates of public exposure to ambient air concentrations of pollutants emitted from stationary sources. The HEM contains an atmospheric dispersion model, which includes meteorological data, and a population distribution estimate based on Bureau of Census data. From source data, the model estimates the magnitude and distribution of ambient air concentrations of the pollutant in the vicinity of a source.

The HEM also contains an area source model. This area source model is used for those sources that cannot be specified in detail. The allocation of emissions from such sources must be inferred by relating them to a correlated parameter such as population. For these sources, the dispersion of emissions is then modeled by a dispersion algorithm to estimate concentration patterns.

The HEM area source model was selected to assess exposure and the carcinogenic risks from CCT's on a nationwide basis for several reasons.

1. The nationwide population of CCT's is estimated to be about 250,000. Of these, about 37,500 are estimated to use Cr^{+6}-based water treatment chemicals, and it is impractical to model this large number of facilities site-by-site.

2. The specific locations of CCT's and the specific design and operating parameters of each CCT are largely unknown.

3. The majority of Cr^{+6} emissions from CCT's is expected to remain airborne and be dispersed over a large area.

4. Comfort cooling towers are most likely to be located in urban areas, which the area source model is well suited to address.

c. *Risk.* Annual incidence of lung cancer attributable to Cr^{+6} emissions from CCT's was estimated based on the population of each State and then totaled to obtain the nationwide incidence. Alaska was assumed to have no CCT's that emit Cr^{+6} because of the reduced need for cooling in the State. Based on the emission factors developed by EPA and the potency factor which was developed using the maximum likelihood estimate method, the total nationwide annual incidence attributable to Cr^{+6} from CCT's was estimated to range from 4 to 112 cases of lung cancer.

In developing the exposure-risk relationship for Cr^{+6}, EPA has assumed that a linear no-threshold relationship exists at and below the levels of exposure reported in the epidemiological studies of occupational exposure. This means that any exposure to Cr^{+6} is assumed to pose some risk of lung cancer and that the linear relationship between cancer risks and levels of public exposure is the same as that between cancer risks and levels of occupational exposure. The EPA believes that this assumption is reasonable for public health protection in light of presently available information. The exposure-risk relationship used by EPA represents a plausible upper-limit risk estimate in the sense that the risk is probably not higher than the calculated level but could be lower.

Maximum individual risk (MIR) from Cr^{+6} emissions from CCT's is the probability that individuals will develop lung cancer if continuously exposed to such emissions over their lifetime (70 years). To estimate MIR, the largest model CCT was assumed to operate continuously and to be located at ground level with a release height of 7.5 meters (m) (24.6 feet [ft]). This tower was then placed in a large city in each State and in Washington, DC. (Alaska was excluded from the analysis because CCT utilization was assumed to be negligible.) The range of the highest MIR was 2.3×10^{-6} to 6.6×10^{-5}. This means that if a person were exposed continuously for 70 years to the maximum concentration predicted, the probability of that person developing lung cancer is estimated to be less than 2.3 to 66 in 1,000,000.

C. Substitutes

1. Types and Availability

Typical nonchromate water treatment formulations currently used in CCT's for corrosion inhibition are based on phosphates, molybdates, and organics. Combinations of polyphosphates and orthophosphates can be used alone at concentrations of 10 to 30 ppm. However, it is more common to add phosphonate and/or polymeric dispersants with the phosphates to reduce scaling. With these combinations, effective corrosion control can be achieved. Water treatment chemical vendors state that molybdates are not a commonly used treatment program primarily because of their high cost and because they are not as effective at providing corrosion protection for copper (of which most CCT heat exchangers are made) as they are for mild steel. However, a combination of up to 15 ppm molybdates with an azole and phosphate can provide better corrosion protection than is offered by the other nonchromate treatment programs. A number of organic compounds can be used alone as corrosion inhibitors. Polyamines, phosphonides, and phosphonium compounds have been used, but the most common are the azoles. Zinc may be used also but must be used with combinations of phosphates, phosphonates, organics, or polymeric dispersants to be most effective. All of these nonchromate water treatment chemicals are readily available, usually from the same vendors who sell chromate treatment chemicals.

2. Health Effects and Environmental Effects

The amount of information in the scientific literature on the health effects of the substitutes for chromium in CCT's is limited for some of the pollutants, especially specific triazole compounds, polyphosphates, and polyacrylates. However, the information available indicates that the health risk is less

(and, in most cases, much less) from exposure to the substitutes than to Cr^{+6}.

There is no clear evidence of carcinogenicity for any of the compounds studied. The triazoles are mutagenic in several assays; but this alone is not enough to consider the compounds to be carcinogenic, and the results of animal studies were inconclusive. One animal study with molybdenum salts reported an increased number of lung tumors among mice exposed by intraperitoneal injection. However, this particular test system has not been demonstrated to be predictive of cancer, and, therefore, the results should be given little weight.

For noncancer health effects of the substitutes, the triazoles appear to be the most toxic. At high concentrations, a number of toxic effects have been reported including respiratory and neurological symptoms, chronic liver morphological and functional changes, and alteration of female reproductive function. One of the triazoles, benzotriazole, is considered to be a severe acute respiratory hazard as defined by the Federal Hazardous Substances Act because of one study that reported an LC value (lethal concentration required to kill 50 percent of the test animals) below 2,000 $\mu g/m^3$ (1,910 $\mu g/m^3$ for benzotriazole). Information derived from a Russian study suggests a value of 10 $\mu g/m^3$ as that level below which no adverse health effects would be observed. Because the maximum hourly value of benzotriazole predicted from CCT emissions is estimated to be in the range of 0.008 to 0.2 $\mu g/m^3$, it is unlikely that anyone exposed to this concentration would suffer significant adverse health effects although the risks are difficult to predict accurately.

Molybdenum compounds appear to be the next most toxic of the alternative water treatment chemicals. The primary health effects of these compounds are acute respiratory system changes and anemia. The threshold limit value (TLV) for molybdenum compounds has been established at 5 mg/m^3, a concentration to which industrial hygienists believe workers may be exposed continuously for 8 hours per day without adverse health effects. The maximum hourly value estimated for molybdates from CCT's is 5 $\mu g/m^3$, a value 1,000 times lower than the TLV.

There is little information available on polyacrylic acid; however, for acrylic acid monomer and methylacrylate, the TLV's are 30 mg/m^3 and 35 mg/m^3, respectively. The maximum hourly value estimated for polyacrylate from CCT's is 0.5 $\mu g/m^3$, about four orders of magnitude lower than the TLV's. Polyphosphates and phosphate esters are rapidly hydrolyzed to orthophosphates (some are insoluble), and toxic effects in animals are rarely reported. Some relatively nontoxic diphosphonates are used as pharmacologic agents for diagnosis and treatment of bone disease.

The prohibition against using Cr^{+6} in CCT's will eliminate one source of human carcinogenic risk. In the evaluation of the health effects of the Cr^{+6} substitutes, data indicative of carcinogenic risk are mostly negative. Additional studies are in progress on inhalation of molybdates and exposure to triazoles to determine carcinogenic potency.

D. Other Environmental Impacts

Prohibiting Cr^{+6} use in CCT's would eliminate environmental pollution and health risks from Cr^{+6} air emissions from CCT's. As chromate users switch to nonchromate programs such as phosphates, which are the most popular, phosphate discharges to sewage treatment plants are estimated to increase by less than 0.1 percent of the phosphate currently discharged. It is estimated that prohibiting the use of Cr^{+6} would increase the use of nonchromium treatment chemicals by up to 18 percent, assuming 15 percent of the CCT's currently use Cr^{+6} (15 percent/85 percent).

Solid waste disposal will not be affected by the proposed rule. Typically, CCT wastewater discharges are not treated onsite to remove Cr^{+6}. In cases where sewage treatment plants are receiving chromium in quantities large enough to treat, it is likely that sources other than CCT's contribute most of the Cr^{+6}; thus, the effect of reducing Cr^{+6} in CCT's would be negligible.

E. Reasonably Ascertainable Economic Consequences of the Potential Regulation

1. Control Option Costs

a. *No chromium.* Alternative treatment programs have been estimated by vendors to cost from 10 to 360 percent more than Cr^{+6}-based water treatment programs (which cost approximately $132/million kilograms (kg) [$60/million lb] of blowdown). Phosphate-based programs typically cost 10 to 100 percent more than Cr^{+6}-based treatment, and molybdate-based treatment is the most costly alternative to Cr^{+6}-based treatment. These costs include the corrosion inhibitor and the other chemicals such as biocides, antiscalants, and dispersants that are necessary for a complete water treatment program. Actual data from several CCT's were obtained that indicate the cost of phosphate-based treatment programs is about twice that of the baseline chromium-based treatment program. The highest chemical unit costs obtained were used to estimate the cost of the phosphate-based and molybdate-based treatment programs at $264 and $608/million kg ($120 and $276/million lb) of blowdown, respectively, to ensure that the economic impacts were not underestimated. The percentages of the CCT market that use the various alternative treatment chemicals are not known; but phosphate programs are the most prevalent, and molybdate use is rare. The CCT systems using chromates are expected to switch to these alternatives in the same proportion. Phosphate-based treatment programs were used to develop the individual and nationwide annualized costs incurred by switching to nonchromium-based chemical treatments because phosphates currently are the most commonly used treatment chemical. No situations have been identified where phosphate treatment programs cannot be used, and they are the least expensive nonchromate program.

To obtain the best results with alternative chemical programs, the chemical feed for corrosion inhibitors, biocides, dispersants, and antiscalants and the blowdown must be controlled automatically based on conductivity of the water; and pH must be controlled in the narrow ranges that are typically recommended by vendors. The purchase and installation cost of these automatic feed and monitoring systems would be about $500 per tower. Although many of the CCT's using chromium-based programs may have automatic feed systems, to ensure that the economic impacts of the proposed rule were not underestimated, EPA's analysis assumes that all towers currently using chromate need these systems when they are switched to an alternative treatment.

The capital cost of automatic feed and monitoring equipment has been annualized over 15 years, which is the estimated useful life of the feed equipment. The interest rate used in the calculation of the annualized cost was 10 percent. The approximately 37,500 CCT's using Cr^{+6}-based treatment also would incur an increase in annual costs to switch to nonchromium-based treatment. The total annualized cost of switching, including the cost for automatic feed and monitoring equipment, would be about $9.4 million. Based on this cost and the reduction in the incidence of lung cancer to zero, the cost effectiveness of eliminating

chromium-based treatment programs is estimated to be $83,000 to $2,400,000 per cancer case avoided.

b. *High-efficiency drift eliminators.* Assuming that all CCT's have low-efficiency drift eliminators, the nationwide annualized cost to industry for the drift eliminator retrofit option including certification and inspection would be about $22 million. Only 75 percent of the CCT's that use chromium-based water treatment are assumed to incur the cost of a drift eliminator retrofit emission control technique. It is assumed that the remaining 25 percent of CCT's would switch to nonchromate treatments. If the Cr^{+6} emissions are reduced by 85 percent, the incidence of lung cancer would be reduced by about 3 to 96 cases per year (based on the range of emissions), and the cost of the control technique would be about $229,000 to $6,500,000 per cancer case avoided.

2. Projected Impacts

Comfort cooling tower manufacturers have indicated that CCT sales will depend on the level of building construction activity. The manufacturers estimate that CCT growth for the next 5 years will be approximately 3,700 CCT's in 1987; 3,400 in 1988; 4,300 in 1989; 4,600 in 1990; and 4,800 in 1991. Approximately 20,800 CCT's will be sold in the next 5 years for use in new applications. Sales in the first 2 years will be slower because of the present building slowdown in many parts of the nation. In the following 3 years, sales growth is projected to increase gradually. For new CCT's that begin operation before the effective date of this proposed rule, the nationwide annualized costs for switching 15 percent of the projected towers to phosphate-based treatment would be $780,000.

3. Economic Impacts

It is expected that switching to nonchromate water treatment programs will not have a significant economic impact upon owners/operators of CCT's or those that rent properties equipped with a CCT. The average annual rental rate is about $129/m² ($12/ft²), and the incremental annualized costs of the nonchromate programs would add less than $0.11/m² ($0.01/ft²) to rental rates if all costs were passed through in the form of increased rental rates. This cost would represent a rent increase of about 0.1 percent. Even those properties that are rented at the lowest rate observed, $22/m² ($2/ft²), would incur increases of less than 1 percent if nonchromate programs were used.

No adverse economic impact is expected to occur for the water treatment vendors because these same vendors supply the nonchromium substitute chemicals. The producers and processors of chromium may be subject to a slight decrease in sales, but the economic impact is not expected to be significant. These conclusions are based on the facts that most water treatment chemical vendors supply nonchromate as well as chromate corrosion inhibitors and that sodium dichromate use in comfort cooling systems is insignificant relative to all other uses. Seven percent of all sodium dichromate produced is used for corrosion inhibition. Five percent of the sodium dichromate used for corrosion inhibition is used in CCT's. Thus, less than 0.35 percent of the sodium dichromate produced is used in CCT's.

The installation of high-efficiency drift eliminators is expected to have no significant economic impacts except possibly for buildings being rented for $22/m² ($2/ft²). A full pass through of costs may increase rents of these buildings by 4 percent.

The total annual nationwide costs of substituting nonchromate corrosion inhibitors for chromates is estimated to be about $9.4 million. The use of high-efficiency drift eliminators could entail annual nationwide costs of about $22 million.

4. Energy Impacts of Proposed Option

A nonchromium option will have only negligible impacts on energy consumption from increased power requirements for automated control systems.

5. Enforcement Burden

Prohibiting chromium-based chemical use in CCT's is estimated to require about 1,850 person-hours per year to enforce. Enforcement personnel would need to check the contents of water treatment chemical containers, labels, and shipment records at 400 water treatment chemical vendors and to spot check a portion of CCT facilities to determine compliance with the rule.

The enforcement burden of requiring retrofit of high-efficiency drift eliminators would be excessive because of the large population of CCT's. Enforcement personnel would need to visit a portion of the approximately 250,000 CCT's to ensure compliance with a regulation requiring retrofit of high-efficiency drift eliminators. The complexity of implementing and enforcing a high-efficiency drift eliminator standard would be significant. At least three manufacturers produce what they claim are high-efficiency drift eliminators, but the designs and physical parameters of the devices are different. Each retrofit would have to be inspected, permitted, and certified initially for correct installation and proper sealing and then reinspected annually to verify continued compliance. It is unlikely that one set of installation criteria could be developed to include all possible situations.

6. Least Burdensome Control Option

The elimination of Cr^{+6}-based water treatment chemical use in CCT's appears to be a technically and economically feasible control technique. The costs of the alternative treatment programs are reasonable, and the nationwide impacts of switching to nonchromate treatment on building rental costs are negligible (less than 1 percent in all cases). The health risks from Cr^{+6} exposure from CCT's would be reduced to zero.

The high-efficiency drift eliminator option plus certification and annual inspection by industry (which would be required for all CCT's with high-efficiency drift eliminators) ($22 million) would be more costly than the nonchromium option ($9.4 million) and could increase building rental rates by as much as 4 percent. Furthermore, this option would only reduce the health risk from Cr^{+6} by about 85 percent.

Because of the costs to retrofit, difficulties in implementation, and the smaller emission reduction potential, high-efficiency drift eliminators are not considered a feasible control option for CCT's at this time. Thus, the nonchromate control option is considered to be the only feasible alternative.

VII. Finding of Unreasonable Risk

To make a finding of unreasonable risk of injury to health from exposure to Cr^{+6} emissions from CCT's, the Agency weighed the probability that health effects will occur from continued use of chromium corrosion inhibitors in cooling water in CCT's against the social and economic costs to society of placing restrictions on their use. The Agency considered each of the factors in section 6(c)(1) of TSCA.

Based on the information and assessments in the rulemaking, which are summarized in this preamble, the Agency has concluded that the avoidance of a potential cancer risk to the public exposed to Cr^{+6} air emissions from CCT's outweighs the social and economic costs of the proposed rule. Therefore, EPA finds that the continued use of Cr^{+6}-based water treatment chemicals in CCT's presents an

unreasonable risk of injury to human health. In brief, this finding is based on the following:

1. The effects of Cr^{+6} on health and the magnitude of the exposure of human beings to Cr^{+6} are serious. Hexavalent chromium has been determined to be a potent human carcinogen. The average annual exposure to Cr^{+6} emissions from CCT's is estimated to be 31 to 886 mg/person (6.9×10^{-5} to 2.0×10^{-3} lb/person). Based on the emission factors developed by EPA and the potency factor, the range of annual incidence of lung cancer that could occur is estimated to be 4 to 112 cases.

2. The benefits of Cr^{+6} use in CCT's are outweighed by the health risk. Effective substitutes are readily available and are already in use at 75 to 90 percent of CCT's. The available information indicates that the public health risk from exposure to substitutes for Cr^{+6} is lower (and in most cases much lower) than that from Cr^{+6}.

Compared to a nonchromate rule, a rule based on high-efficiency drift eliminators would be less effective and would require retrofit of a large number of CCT's at greater expense. Thus, EPA has concluded that a prohibition of use of Cr^{+6}-based water treatment chemicals is appropriate because substitutes are available and prohibition is cost-effective.

Based on currently available information, EPA also believes that the cost effectiveness is reasonable to eliminate Cr^{+6} chemical use when the high-efficiency drift eliminators are already used. The EPA solicits comments on whether, as an option, those CCT's which currently have high-efficiency drift eliminators should be exempted from the prohibition against using Cr^{+6} chemicals if such an exemption were feasible. As described in the discussion of control options, development and implementation of a rule based in part on high-efficiency drift eliminators is not technically feasible at this time because the effectiveness of individual existing high-efficiency drift eliminators is unknown and the design criteria and test measures on which a certification or compliance program would be based are not available. The EPA solicits data on the effectiveness and number of high-efficiency drift eliminators in use, the certification procedures, test methods, and technical specifications that could be used in defining high-efficiency drift eliminators, and the potential impacts on labeling, reporting, and recordkeeping requirements. Information submitted in response to this notice would be considered in the final decision.

3. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health, are reasonable and not unduly burdensome for the 10 to 25 percent of CCT's that will be affected.

4. The proposed prohibition on use of Cr^{+6}-based water treatment chemicals will not eliminate all Cr^{+6} in the environment because Cr^{+6} chemicals are used in a variety of sources. However, the elimination of this major source will eliminate the significant risks attributed to Cr^{+6} air emissions from CCT's.

VIII. Analysis Under Section 9 of TSCA (Other Authorities)

Section 9(a) of TSCA provides that, if the Administrator of EPA determines that an unreasonable risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by EPA, the Administrator must submit a report to the agency administering that other law that describes the risk and the activities that present such risk. If the other agency responds by declaring that the activities described to not present an unreasonable risk or if that agency initiates action under its own law to protect against the risk, EPA is precluded from acting against the risk under TSCA. Section 9(b) of TSCA requires EPA to review other Federal authorities administered in whole or in part by EPA to determine whether action under those authorities may prevent or sufficiently reduce unreasonable risk. If this is the case, EPA is directed to use these other statutes unless the Administrator determines in the Administrator's discretion, that it is in the public interest to protect against such risk under TSCA. In making such a public interest finding, section 6(c) of TSCA states: "the Adminstrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions taken under this Act and under such law (or laws), and (iii) the relative efficiency of actions under this Act and under such law (or laws) to protect against such risk of injury." Section 9(d) of TSCA requires the Administrator to consult and coordinate TSCA activities with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burden of duplicative requirements.

The TSCA allows regulation of a chemical substance based on all of its risk and, thereby, allows EPA to remedy the deficencies in other statutes that can deal with only parts of the risk. (Statement of the President on signing S. 3149 into law, October 12, 1976, Weekly Compilation of Presidential Documents, Vol. 12, No. 42, October 18, 1976, at 1489, S. Rep. No. 94–698, 94th Congress, 2d Session at 2.) The need for a total exposure approach to chemical regulation and the dangers of a fragmented regulatory approach were recognized even during the early congressional hearings on TSCA. See, e.g., 1973 Senate Hearings at 212–214; 1972 House Hearings at 65–67. No other single law provides the authority to deal comprehensively with multimedia hazards. In particular, Congress designed TSCA to deal with chemical substances for which the most appropriate remedy would be a total ban on their production and distribution in commerce.

Laws administered by other Federal agencies could not address the risks covered by this proposed rule. The general public is the predominant population that is affected by exposure to Cr^{+6} air emissions. Risk to public health from Cr^{+6} air emissions from CCT's typically would be addressed under the CAA. Consequently, EPA compared the potential requirements for regulating Cr^{+6} emissions from CCT's under TSCA and the CAA and evaluated their impacts to determine the authority that is more appropriate. Section 6 of TSCA provides the authority not only to prohibit the use of Cr^{+6}-based water treatment chemicals in CCT's but also to prohibit the sales of such chemicals for use in CCT's. Under section 112 of the CAA, it would not be possible to prohibit the sales of a chemical. However, it would be possible to prohibit the use of Cr^{+6} chemicals in CCT's by setting a zero emissions rule.

Although TSCA and the CAA could require equally stringent control limitations, TSCA provides a better mechanism for enforcement. The number of distributors or vendors that sell corrosion inhibitors constitutes a much smaller population than the estimated number of CCT's (approximately 40 vendors vs. 250,000 CCT's). In the majority of cases, the chemical vendors are actually servicing the CCT's. By prohibiting the sales of a chemical for a specific use under TSCA, the vendors would be required to comply with recordkeeping and chemical labeling requirements. The records would identify CCT owners or operators to whom the water treatment chemicals are being distributed and whether Cr^{+6}-based chemicals are being

provided for industrial tower use at the same location. Thus, enforcement personnel could concentrate on examining the vendor records and selecting individual sites to visit where water treatment chemicals are being sold for industrial tower and CCT use. Regulations under TSCA could require vendors to maintain records of shipments and consignees and assess penalties for noncompliance. Under the CAA, however, the recordkeeping requirements would extend only to "any person who owns or operates any emission source or who is subject to any requirements of this chapter." The primary thrust of regulations under the CAA would be to ensure compliance with the emission limitations by the CCT owners and operators. This information and the analyses discussed above indicate that TSCA is the appropriate authority for this rulemaking and that it is in the public interest to protect against this risk under TSCA. A rulemaking that prohibits Cr^{+6} use in or distribution in commerce for use in CCT's is consistent with regulatory actions previously taken under TSCA section 6.

The EPA has reviewed the options for limiting exposure to Cr^{+6} emissions from CCT's and has concluded that the reduction in risk to the public and enforcement of the rule for this substance cannot be satisfactorily accomplished in any way other than by prohibiting the use of Cr^{+6}-based chemicals in CCT's and the distribution in commerce for use in CCT's. The EPA finds that, based on currently available health information, the public health risk from exposure to substitutes for Cr^{+6} use in CCT's is lower than that from Cr^{+6}. Compared to a nonchromate rule, a rule based on high-efficiency drift eliminators would be less effective and would require retrofit of a large number of CCT's at greater expense. Thus, EPA has concluded that a prohibition of the use of Cr^{+6}-based water treatment chemicals in CCT's is appropriate because substitutes are available and a prohibition is cost effective.

IX. Impact on Other Relevant Regulations

Other relevant existing regulations include effluent guidelines established under the Clean Water Act and State limitations on chromium discharge. These regulations would not be affected adversely by this proposed rule.

X. Language of Proposed Rule

A. Structure of the Proposed Rule

This proposed rule is structured as follows: the chemical substance to be regulated is described in paragraph (a) of proposed § 749.68. The purpose of the rule is described in paragraph (b). Paragraph (c) discusses the applicability of the rule. Paragraph (d) contains definitions. Paragraph (e) contains prohibitions on distribution in commerce and use of Cr^{+6}-based water treatment chemicals in CCT's. Paragraph (f) contains the effective dates for the prohibitions described in paragraph (e). Paragraph (g) describes labeling requirements. Paragraph (h) describes recordkeeping requirments. Paragraph (i) describes the reporting requirements. Paragraph (j) describes the consequences of failure to comply with the requirements of this rule, and paragraph (k) provides reference to the authority under which inspections for this rule would be conducted.

B. Discussion of Major Provisions

1. Substance Subject of This Section

This section applies to Cr^{+6}.

2. Purpose

The purpose of this proposed rule is to prevent unreasonable cancer risk associated with public exposure to Cr^{+6} emissions from CCT's.

3. Applicability

The rule would apply to any person who distributes in commerce Cr^{+6}-based water treatment chemicals to CCT users or who presently uses Cr^{+6}-based water treatment chemicals in CCT's.

4. Prohibitions

The rule would prohibit the use of Cr^{+6}-based water treatment chemicals in CCT's and the distribution in commerce for use in CCT's. The prohibition on distribution in commerce would become effective 45 days after publication of the final rule in the **Federal Register**. This would allow vendors adequate time to become familiar with the final rule. Those who distribute in commerce Cr^{+6}-based water treatment chemicals for use in CCT's have other markets readily available where such chemicals may be used.

The prohibition on use of Cr^{+6}-based water treatment chemicals would become effective 135 days after publication of the final rule. Data obtained during development of this proposed rule indicate that users stockpile little or no water treatment chemicals. However, water treatment chemical vendors suggest that a 3-month supply of the chemicals should be kept on hand at all times. The 135-day period covers the unlikely event that CCT users will buy a 3-month supply of chemicals on the last day that vendors are permitted to sell Cr^{+6}-based chemicals to CCT users. Thus, 135 days after promulgation will allow ample time for users to exhaust existing inventories of any Cr^{+6}-based water treatment chemicals.

5. Labeling

Forty-five days after publication of the final rule, all water treatment vendors (including blenders) of Cr^{+6}-based chemicals that distribute these chemicals for cooling tower use would be required to label containers with a warning that inhaling Cr^{+6} increases the risk of lung cancer and that use in CCT's is prohibited. The labeling requirement would apply only to persons who distribute in commerce water treatment chemicals for cooling tower use. It would not apply to producers and processors (persons who mine or initially process chromium ore) who do not sell water treatment chemicals to cooling tower owners/operators. Labeling of Cr^{+6}-based chemicals that are sold for use in cooling towers would be required so that cooling tower owners/operators would know that Cr^{+6} use in CCT's is unlawful.

6. Reporting/Recordkeeping

The proposed rule would require an initial report from water treatment chemical vendors that distribute chemicals for use in cooling towers that identifies their headquarters and shipment locations. The report would be filed within 45 days of publication of the final rule or, for new vendors after the rule is in effect, within 30 days of first distributing water treatment chemicals in commerce. An updated list would be required when changes in office locations occur. Reporting of office locations by water treatment chemical companies would be required so that EPA enforcement personnel may identify sites where records are kept and sites for inspection. Recordkeeping by vendors would be required. The records would contain the company name, address, telephone number, and contact name of any CCT user to whom water treatment chemicals are shipped and any industrial cooling tower users to whom Cr^{+6}-based chemicals are shipped and the locations of chemical use. These records would be retained for 2 years and be available for copying.

Recordkeeping is proposed so that enforcement personnel may check records to determine compliance with the proposed rule by the vendors and to identify CCT locations. The recordkeeping also will aid in determining sites where Cr^{+6} is being used in industrial cooling towers. A site

where both industrial towers and CCT's are located may be an area on which inspection activities should be focused. Once a problem or violation is identified, the records will be used to assess the extent of the problem.

Any recordkeeping requirement is subject to the Paperwork Reduction Act of 1980. It is expected that 400 companies would be affected by these requirements. The resulting cost to industry of the required labeling, reporting, and recordkeeping would be an average of $169,900 per year for the first 3 years the rule is in effect. Existing records kept already by affected facilities probably would meet the requirements with only slight modifications.

XI. Public Hearing

A public hearing will be held to receive oral comments on this proposed rule only if such a hearing is requested in writing and the request is received by EPA at the address in the **ADDRESSES** section of this preamble by May 13, 1988. Such a request must be received by this date to enable EPA to make appropriate arrangements for the hearing. If requested, the public hearing will be held June 13, 1988, at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, beginning at 10 a.m. Attendance at the hearing will be open to anyone though space may be limited. However, only persons who request in writing an opportunity to speak will be allowed to present oral comments. Such a request must be made in writing to the address in the **ADDRESSES** section of this preamble and must be postmarked no later than May 23, 1988. The request must include a statement of the person's interest in this rulemaking, a brief outline of points to be addressed, an estimate of the time required, and, for requests from an organization, a nonbinding list of persons to take part in the presentation. The EPA will make the hearing schedule publicly available and send it to each person who has requested an opportunity to present oral comments.

A verbatim transcript of the hearing and copies of any written statements will be placed in the public file and will be available for inspection and copying at the address in the **ADDRESSES** section of this preamble.

XII. Written Comments and Confidential Business Information

In accordance with 40 CFR 750.4(a), all comments must be postmarked no later than the end of the public comment period specified in this notice and must contain all comments on this notice regarding information reasonably available to the commenter at the time. Section 750.4(b) requires that reply comments must be postmarked no later than 2 weeks after the close of the hearing and are restricted to comments on other comments, material in the hearing record, or material that was not reasonably available to a commenter in sufficient time before the main comments were due. Section 750.4(c) provides procedures for obtaining an extension of the time to file the main and reply comments. Comments submitted after the comment period or after all extensions have expired are not required to be added to the rulemaking record or to be considered. Four copies of all comments are required to be submitted. Written comments should be sent to the address given in the **ADDRESSES** section of this preamble and should refer to docket number OPTS 61012.

Any person who submits comments on this proposed rule which the person claims as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. The EPA requests that any person submitting confidential comments prepare and submit a nonconfidential version of the comments for inclusion in the public file. Comments not marked confidential at the time of submission will be placed in the public file.

XIII. Rulemaking Record

The EPA has established a record for this rulemaking [docket number OPTS 61012]. This record includes basic information considered by the Agency in developing this proposed rule and appropriate **Federal Register** notices. The record now includes the following categories of information:

Subcategory II–A. EPA Studies or Contractor Reports,

Subcategory II–B. EPA Factual Memoranda,

Subcategory II–C. EPA Correspondence to Persons Outside the Agency,

Subcategory II–D. Correspondence Received from Persons Outside the Agency,

Subcategory II–E. EPA Memoranda of Meetings and Telephone Conversations with Outside Persons,

Subcategory II–I. References Not Readily Available to the Public Elsewhere,

Subcategory II–J. Miscellaneous Federal Register Notices Published During Proposal Development,

Subcategory IV–D. Additional Comments Received.

Confidential business information, while part of the record, is not available for public review. A public version of the record, without any confidential business information, is available for inspection and copying at the address in the ADDRESSES section of this preamble.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under E.O. 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it would not result in any of the adverse impacts set forth in section 1 of E.O. 12291 as grounds for finding a rule to be major. The industry-wide annualized cost would be less than $9.4 million, which is considerably less than the $100 million established as the criterion for a major rule in the Order. The proposed rule would not cause any significant increase in costs or prices for any sector of the economy or for any geographic region. The economic analysis of the effect on the industry as a result of the proposed rule did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion of the Order).

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection in the public file at the docket location listed under the **ADDRESSES** section of this preamble.

B. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The recordkeeping provisions in this proposed rule will be submitted to OMB for approval under the Paperwork Reduction Act. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB and marked Attention: Desk Officer for EPA. The final rule will explain EPA's response to OMB and public comments on the proposed labeling, recordkeeping, and reporting requirements.

List of Subjects in 40 CFR Part 749

Chemicals, Chromium, Cooling towers, Environmental protection, Hazardous substances, Hexavalent chromium, Labeling, recordkeeping, and reporting requirements.

Date: March 22, 1988.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended by adding Part 749, consisting at this time of § 749.68 under Subpart D, to read as follows:

PART 749—WATER TREATMENT CHEMICALS

Authority: 15 U.S.C. 2605 and 2607.

Subparts A-C—[Reserved]

Subpart D—Air Conditioning and Cooling Systems

§ 749.68 Hexavalent chromium chemicals in comfort cooling towers.

(a) *Chemical substance subject to this section.* Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588-01-9), is subject to this section.

(b) *Purpose.* The purpose of this section is to impose certain requirements on activities involving hexavalent chromium to prevent unreasonable risks associated with human exposure to air emissions of hexavalent chromium from comfort cooling towers.

(c) *Applicability.* This section is applicable to hexavalent chromium use in, and distribution in commerce of hexavalent chromium-based water treatment chemicals for use in, comfort cooling towers.

(d) *Definitions.* Definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section unless otherwise specified in this paragraph. In addition, the following definitions apply:

(1) "Act" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

(2) "Hexavalent chromium-based water treatment chemicals" means any hexavalent chromium, alone or in combination with other water treatment chemicals used to treat water.

(3) "Comfort cooling towers" means cooling towers that are dedicated exclusively to and are an integral part of heating, ventilation, and air conditioning or refrigeration systems.

(4) "Container" means any bag, barrel, bottle, box, can, cylinder, drum, or the like that holds hexavalent chromium-based water treatment chemicals for use in cooling tower systems.

(5) "Cooling tower" means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to cool warm water by direct contact.

(6) "Industrial cooling tower" means all cooling towers used to remove heat from industrial processes, chemical reactions, or plants producing electrical power.

(7) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hexavalent chromium-base water treatment chemicals that are to be used in cooling tower systems.

(8) "Person" means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

(9) "Shipment" means the act or process of shipping goods by any form of conveyance.

(10) "Water treatment chemicals" means any combination of chemicals used to treat water in cooling towers and can include corrosion inhibitors, antiscalants, dispersants, biocides, and other chemicals.

(e) *Prohibition of distribution in commerce and commercial use.*

(1) All persons are prohibited from distributing in commerce hexavalent chromium-based water treatment chemicals for use in comfort cooling towers.

(2) All persons are prohibited from commercial use of hexavalent chromium-based water treatment chemicals in comfort cooling towers.

(f) *Effective dates.* (1) The prohibition described in paragraph (e)(1) of this section against distributing in commerce hexavalent chromium-based water treatment chemicals for use in comfort cooling towers is effective (45 calendar days after the date of publication of the final rule).

(2) The prohibition described in paragraph (e)(2) of this section against using hexavalent chromium-based water treatment chemicals in comfort cooling towers is effective (135 calendar days after the date of publication of the final rule).

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals after (45 calendar days after the date of publication of the final rule) shall affix a label or keep an existing label affixed to each container of the chemicals. The label shall consist of the following language:

Warning: This product contains hexavalent chromium. Hexavalent chromium when inhaled increases the risk of lung cancer in humans. Federal law prohibits use of this substance in comfort cooling towers, which are towers that are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning or refrigeration systems.

(2) The first word of the warning statement shall be capitalized, and the type size for the first word shall be no smaller than 10-point type for a label up to 10 square inches in area, 12-point type for a label above 10 but less than or equal to 15 square inches in area, 14-point type for a label above 15 but less than or equal to 30 square inches in area, or 18-point type for a label over 30 square inches in area. The type size of the remainder of the warning statement shall be no smaller than 6-point type. All required label text shall be in English and of sufficient prominence and shall be placed with such conspicuousness, relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(h) *Recordkeeping.* (1) Any person who distributes in commerce any water treatment chemicals for use in comfort cooling towers or any hexavalent chromium-based water treatment chemicals for use in industrial cooling towers after (45 calendar days after the date of publication of the final rule) must retain at the headquarters of the company in one location documentation of information showing:

(i) The name, address, contact, and telephone number of any cooling tower owners/operators to whom the chemicals were shipped.

(ii) The chemicals included in the shipment, the amount of each chemical shipped, and the location(s) at which the chemicals will be used.

(2) This information must be retained for 2 years from the date of shipment.

(i) *Reporting.* (1) Any person indentified in paragraph (h)(1) of this section must report to the Regional Administrator of the EPA Region in which the company headquarters is located. The report must be postmarked no later than (45 calendar days after the date of publication of the final rule), or 30 days after the person first begins the activities described in paragraph (h)(1) of this section, whichever is later, and must include:

(i) For the headquarters, the company name, address, telephone number, and the name of a contact.

(ii) For the shipment offices through which water treatment chemicals are sold for use in cooling towers, the

company name, address, telephone number, and the name of a contact.

(iii) A statement of whether the company distributes in commerce any hexavalent chromium-based water treatment chemicals for use in cooling towers.

(2) The report identified in paragraph (i)(1) of this section must be updated as changes occur in the company headquarters or shipment office information. The updated report must be submitted to the Regional Administrator and must be postmarked no later than 10 calendar days after the change occurs.

(j) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(k) *Inspections.* EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this section.

[FR Doc. 88-6806 Filed 3-28-88; 8:45 am]
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federal register

Tuesday
March 29, 1988

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 4100
Grazing Administration; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2604; AA-220-88-4322-02]

Grazing Administration, Exclusive of Alaska; Amendments to the Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the regulations for the management of grazing on the public lands under the jurisdiction of the Bureau of Land Management. These regulations were issued by the Department of the Interior as proposed rulemaking and published in the **Federal Register** on May 20, 1987 (52 FR 19032) with an initial public comment period of 60 days. In order to correct omissions from, and an inadvertent editing error in, the proposed amendments, the comment period was extended an additional 30 days (52 FR 27321) ending on August 19, 1987, to allow the public a reasonable opportunity to review the corrections. Two thousand one hundred eighty-six comments were received and considered during the development of this final rulemaking. This final rulemaking revises the regulations in 43 CFR Group 4100 to clarify the role of land use plans as they relate to the authorization and modification of grazing use of the public lands, clarifies the way in which livestock will be managed in cooperation with permittees and lessees, and also clarifies the provisions of the regulations on unauthorized grazing.

EFFECTIVE DATE: April 28, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room 5626, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wilton A. Peterson or Dee R. Ritchie, (202) 653-9195 or Mark E. Lawrence, (202) 343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking amends the existing regulations for managing livestock grazing as one of the multiple uses of the public lands by: Adding provisions for cancellation, suspension, and modification of Allotment Management Plans; requiring allotment management plans to prescribe livestock grazing practices that meet multiple use objectives; clarifying the relationship between the land use planning process and the livestock grazing program to ensure that land use plan objectives are achieved; adding provisions for late payment of grazing fees; reaffirming the position of the Department of the Interior on enforcement of environmental protection and conservation laws; and emphasizing that provisions prohibiting supplemental feeding will continue to require authorization in accordance with the decision in *Natural Resources, Defense Council, Inc. et al. v. Hodel, et al.*, 618 F. Supp. 848 (E.D. Cal. 1985). This final rulemaking also amends the provisions on base property and transfer of grazing preference and adds provisions suggested in the decisions of the Office of Hearings and Appeals in the cases of *George Fasselin v. Bureau of Land Management, et al.*, and *Marius Henry Mills v. Bureau of Land Management, et al.*. The proposed rulemaking included provisions for Cooperative Management Agreements (CMAs) with livestock grazing permittees/lesses. Those provisions have been withdrawn and are not included in this final rulemaking.

The proposed rulemaking was published in the **Federal Register** on May 20, 1987 (52 FR 19032), with a 60 day comment period. A notice correcting omissions from, and an inadvertent editing error in, the proposed amendments, was published in the **Federal Register** on July 20, 1987 (52 FR 27321), extending the comment period to August 19, 1987, to allow the public a reasonable opportunity to review the corrections. During the 90 day comment period, 2,186 comments were received; 1,907 from individuals; 82 from associations; 11 from state and local governments; 3 from other federal agencies; 181 from businesses and 2 from congressional offices.

Most of the public comments supported the proposed regulations with some modifications. Most commenters expressed the view that selective management, relying on good monitoring data, cooperative management, and managing livestock grazing on public rangelands according to the principles of multiple use and sustained yield, will strengthen the Bureau of Land Management's (BLM) ability to manage the public lands. The comments also supported cost effective range improvements; changing the use of the term "undue and unnecessary degradation" where used in the proposed rulemaking and moving away from the term and concept of "grazing capacity". The comments generally supported permittees signing an actual use form but objected to permittees having to certify actual use, and expressed support regarding base property, preference, and permit/lease relationships; generally supported allotment management planning, but wanted the concept expanded to include coordinated resource management planning and other cooperative efforts; generally supported billing procedures that require prompt payment of fees, but were concerned that late fee penalties were excessive; and suggested that compensation to the Government for nonwillful unauthorized grazing use should be at the current public land grazing fee rate charged for an animal unit month (AUM).

Commenters opposing the proposed regulations expressed views that the proposed rules would eliminate many of the policies and procedures controlling grazing and protecting wildlife habitats; elimination of the concept of "grazing capacity" would allow overgrazing; the proposed regulations weakened the land use planning requirement for allocation of forage to multiple uses, especially wildlife and watershed, and would allow all forage to be given to livestock; the penalties against livestock operators for violation of the Wild Horse and Burro Act and other federal and state environmental laws should not be removed; the trespass regulations should be strengthened and not reduced as proposed; CMAs should not be implemented; an environmental impact statement with full public disclosure should be prepared on the proposed grazing regulations. Several other opposing comments suggested that livestock grazing be eliminated from the public lands.

In reviewing all comments it became evident that many commenters did not fully understand the procedures in the proposed rulemaking. Moreover, it is clear that some commenters did not fully understand the concept of "multiple use." The BLM manages the public rangelands by statutory authority i.e., the Taylor Grazing Act, Federal Land Policy and Management Act, Public Rangelands Improvement Act and others. These statutes give the BLM authority and responsibility to establish policy, provide for land use planning, and manage all uses and activities on public lands. The Federal Land Policy and Management Act (FLPMA) defines multiple use as "the management of the public lands and the various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." It further defines multiple use as "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and

nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." Those who advocate arbitrarily removing some of these uses and activities from the public lands are suggesting that the BLM take a position of not fulfilling its multiple use mandates in areas where, through land use planning, livestock grazing has been determined to be compatible with other uses and land use planning objectives. In order to allocate the public lands for these competing uses, FLPMA provides for "the development and revision of land use plans." Some of the principles prescribed in FLPMA (section 202(c)) 43 U.S.C. 1712(c) and followed by BLM in the development of these land use plans are to "use and observe the principles of multiple use and sustained yield" and "use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences." Once objectives are identified and decisions as to resource uses have been made through the land use planning process, site specific management plans are developed to manage the resources. In the range management/livestock grazing resource program the site specific planning is accomplished by allotment management plans (a term defined in section 103(k) of FLPMA), coordinated resource management, and other cooperative management efforts, as provided for in section 2 of the Taylor Grazing Act and section 307(b) of FLPMA. Under these statutes the BLM is required to develop regulations to manage these resources on a multiple use-sustained yield basis. The purpose of the grazing regulations is to manage the livestock grazing program as an integral part of the overall multiple use of the public lands.

As to the suggestion in the comments that the BLM prepare an environmental impact statement on the final rulemaking, the Department of the Interior has determined that this is unnecessary. The final rulemaking will not result in new or significant impacts; it does not constitute a major Federal action significantly affecting the quality of the human environment. This is further supported by an environmental assessment completed on the rulemaking. In addition, 137 site-specific environmental impact statements have already been completed on grazing use covering 169,809,000 acres of public rangelands that are subject to the grazing program encompassed by this rulemaking. By the end of 1988, five additional environmental impact statements will have been completed on grazing use involving another 4,042,000 acres, for a total of 142 area specific environmental impact statements on 173,851,000 acres. These environmental impact statements discuss the effects of livestock grazing and provide site-specific analysis, allotment or area specific objectives, and site-specific grazing proposals, and address site-specific issues, resource problems, conflicts, and management actions on public rangelands.

Comments on specific provisions of the rulemaking follow.

Section 4100.0–5 Definitions.

Many comments were received concerning the modification or deletion of some of the definitions. Several commenters opposed the definition of "actual use" in the regulations. After consideration of these comments, the final rulemaking has modified the definition of "actual use" to read "where, how many, what kind or class of livestock and how long livestock graze on an allotment." This information is necessary to determine how the vegetation resource is responding to the current grazing prescription and whether the management objectives are being achieved.

Several comments suggested it is not necessary to require the permittee/lessee to certify the accuracy of the "actual use report". Others commented that users cannot be trusted to give an accurate report. After consideration of the comments, it was determined that the definition of "actual use report" should be modified to indicate that the actual use report is a report of the actual livestock use submitted by the permittee/lessee. In actual practice, the livestock permittee/lessee certifies the accuracy of the actual use information when he/she signs the actual use forms and the inclusion of the word "certified" provides no additional benefit to the agency or the operator. Where problems occur, and it is necessary, the BLM will make livestock counts to verify the actual use.

The definition of "cooperative management agreements" has been removed because the provisions in § 4120.1 have been removed from this final rulemaking. This is discussed later in this preamble.

Several comments regarding "land use plan" expressed concern that the definition and process would be diluted under the proposed rulemaking. The definition has been modified in the final rulemaking to read "a resource management plan or a management framework plan which is being followed until replaced by a resource management plan." Management framework plans, as well as Resource Management plans do meet the land use plan requirements of the Federal Land Policy and Management Act and establish management direction for resource uses of public lands.

Many comments expressed concern over the deletion from the proposed rulemaking of the definition of the term "Livestock Grazing Capacity". Many comments requested that the term be retained, while several concurred in the removal of the definition. After careful consideration and review, the final rulemaking has adopted the "livestock carrying capacity" definition proposed by the Society for Range Management and others. Livestock Carrying Capacity is the maximum stocking rate possible without damage to vegetation or related resources. Carrying capacity may vary from year to year on the same area due to fluctuating forage production. The term "carrying capacity" reflects more clearly the intention to tie actual use to capability of land than does the term "grazing capacity." This definition connotes flexibility to adjust stocking rates as, through monitoring, these changes are determined to be needed to meet land use plan objectives. In order to bring the provisions of other sections into conformance with this change, those sections are being amended to change "livestock grazing capacity" to "livestock carrying capacity."

Many comments were received concerning the definition of the term "monitoring" and expressed concern regarding use of the phrase "periodic observation" in the definition. After careful consideration, it was determined that the first sentence in the definition of "monitoring" in the proposed rulemaking should be modified by reinserting the word "orderly" as it exists in the present regulations. The reinsertion of this word in the final rulemaking connotes a planned and scheduled system of monitoring. Also, the word "or" in the proposed rulemaking is replaced by the word "and" to indicate that monitoring is both periodic observation and orderly collection of data to evaluate grazing management actions and their effectiveness in meeting management objectives. This will allow for flexibility in monitoring custodial or category "C" allotments, and yet provide some observed and recorded responses by the range professional to grazing use. These category ("C") allotments, and some allotments in the maintain ("M") category, do not require detailed monitoring because a determination has been made on the basis of previous

monitoring that these allotments are doing well and will continue to do so under existing grazing management practices. The use of periodic (usually yearly) observation can detect subtle changes that may suggest that more intensive monitoring is needed.

Several commenters expressed the view that the present language in the definition of the term "range improvement" be retained but that some modification be made by adding wording to include stabilization of soil and watershed conditions. The proposed definition of range improvement is broad and would encompass these concepts. It has been determined that the definition contained in the proposed rulemaking is adequate and accurate. The language of the proposed rulemaking is retained in the final rulemaking. It is, with one modification, the definition cited in the Public Rangelands Improvement Act.

A few comments were received concerning the inclusion in the proposed rulemaking of the definition of the term "rangeland studies" and suggested modification to ensure consistency and credibility with other agencies and scientific communities regarding accepted rangeland study methods. The definition of "rangeland studies" in the final rulemaking has been modified to recognize that they include any study method accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met. There are several accepted methods to obtain this study data and developing a laundry list of accepted methods is unnecessary in this final rulemaking.

A few comments were received concerning the addition of the definition of the term "trend" and how it will be used by the agency. The final rulemaking modifies the definition in response to the comments, to indicate that "trend" is the directional change over time, either toward or away from desired management objectives. This change will be measured, over time, in kind, proportion or the amount of desired plant species.

A few comments were received concerning the definition of the term "utilization" and suggested that utilization should be determined at the end of the growing season instead of at the end of a grazing period. After careful consideration of the comments, the definition has been modified to provide that "utilization" is both the percentage of the forage consumed by livestock during a specified period, and the livestock grazing utilization pattern on the allotment. The suggestion that utilization be measured at the end of the plant growing season has not been adopted because it is not feasible in that it will not allow for a determination of use levels due to plant regrowth. In order for utilization monitoring to be useful for management of rangelands, it must measure the amount of forage consumed by livestock during their use of an allotment or part of an allotment over a specified period of time. The definition adopted in the final rulemaking would indicate more effectively livestock use levels and grazing patterns.

Section 4100.0–8 Land use plans.

Many comments were received concerning land use planning. Most comments suggested that the proposed rulemaking indicated that land use planning was only a guide for livestock grazing management and consequently weakened the land use planning process in the BLM. They urged that all grazing be managed under the multiple use-sustained yield concept. Many other comments supported this section as proposed because they felt that it now clearly ties the livestock grazing regulations and policies to the land use planning process. They felt this relationship must be strengthened to make clear that the land use plan allocates vegetation for livestock forage and competing resource uses. They also suggested that the land use plan needs to identify the current level of livestock grazing use, establish the objectives for grazing management, and outline how the objectives will be met. After careful consideration of all comments regarding land use plans, the Department of the Interior reaffirms that, with respect to livestock grazing, land use plans will establish allowable resource uses (these may be single uses or combinations of uses), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. The livestock grazing element of the land use plan is developed in coordination with all interested parties and in consultation and cooperation with grazing permittees. Livestock grazing activities and management actions will be in conformance with the land use plan. ("Conformance" is as defined in 43 CFR 1601.0–5(b)). Existing livestock grazing management practices may be adjusted during plan implementation as the result of monitoring and other management actions that are consistent with the land use plan.

Section 4110.2–1 Base property.

Many comments were received concerning base property. Many of the comments stated that loss of ownership or control of base property should not result in the automatic termination of a person's grazing preference and took the position that the preference right belongs to the permittee. Several comments were in favor of the base property requirement in the existing regulations because this provides safety to the livestock industry from sale of preference rights and permits outside the livestock industry. Other commenters suggested a 90-day grace period after loss of base property during which a person can transfer the grazing preference and permits before losing them. Finally, several commenters advocated the reestablishment of the base property commensurability requirements. Many of these comments may have resulted from an error in the proposed rulemaking. Section 4110.2–1(d), refers to termination of the "grazing preference" upon loss of ownership or control of base property. This provision should have stated only that the permit or lease shall be terminated upon loss of ownership or control of base property. The permit or lease must be terminated because the permittee/lessee no longer meets the mandatory qualification requirements. It should be clearly understood that the grazing preference is attached to the base property. This is a long-standing rule supported by court decisions and consistent with statutory language. The final rulemaking has been modified, however, in paragraph (d) of this section by adding the phrase "or control" after the word ownership, in the first line. The Department has determined that this is the only change necessary in the final rulemaking and that the provision, as modified, is consistent with the intent of the Taylor Grazing Act.

Section 4110.2–2 Specifying grazing preference.

Many comments were received concerning this section of the proposed rulemaking. In the existing regulations this section is titled "grazing preference allocation." Some commenters suggested that the word "allocation" not be deleted, because without it the regulation would allow for all the available forage to be given to livestock and not be shared with wild horses and burros and other uses. After studying this issue it has been decided that the word "specified" is more accurate than "allocation." Allocation of forage is accomplished during the land use

planning process, and consists of a determination of how much of the forage will go to satisfaction of the grazing preference and will be allotted as either active use or suspended use. Section 4110.2–2 then provides for specifying or restating in the permit or lease the amount of the grazing preference, including what portion of the preference is active use and what portion is suspended use. The level of active use is based on the availability of forage as determined in the land use plan and through monitoring.

Many commenters also questioned deleting paragraph (d), "Allotments". During review of the comments, it was determined that reviewers may have been confused about this subject. In the proposed rulemaking, item 6 stated that § 4110.2–2 was revised and contained paragraphs (a) through (c). No reference was made to paragraph (d). Item 9 on the same page, stated that § 4110.2–4 was added in the proposed rulemaking and its title was "Allotments." However, there was no specific statement that paragraph (d) in § 4110.2–2 had been moved to become the new § 4110.2–4. It was determined that the separate § 4110.2–4 would more effectively highlight the importance and intent of this section than keeping the provision as a subsection with no change in the wording. Further, to better emphasize both the importance of land use planning and its original intent to strengthen the process in the grazing regulations, as suggested by the comments, the wording in § 4110.2–2(a) has been modified in the final rulemaking by adding a third sentence to indicate that active use shall be based upon the amount of forage available for livestock grazing established in the land use plan.

Section 4110.2–3 Transfer of grazing preference.

Many comments were received concerning the proposed provisions for transfer of the grazing preference. Several suggested that persons with an encumbrance against the base property would not get by regulation any right that they would not already have under law; therefore, this provision should not be adopted in the final rulemaking. Others suggested that in cases of transfer, where portions of the original base property become the new base property, and where the security is held by a lienholder, the lienholder does not need to give consent. Some commenters suggested that the authorized officer be able to grant extensions of time to qualify for a transfer if the delay is due to the operation of law, not just probate proceedings. After careful consideration of the comments received, it was determined that the provisions of the proposed rulemaking are adequate to protect the lienholders of record because a base property pledged as security for a loan by a permittee has the grazing preference attached to it. By operation of law, the permittee cannot change the status of the property without the concurrence of the lienholder. The concern regarding transfers, where only a portion of the original base property is involved, is adequately covered in existing regulations under § 4110.2–3(c). Where extensions of time are required in transfers through operation of law, adequate provisions are provided to the authorized officer in § 4110.2–3(e). During review of the comments, and consideration of modifications for this section, it was discovered that there was an error in the proposed regulations. Instead of using the word "transferor," or the seller of the property, the proposed rulemaking used "transferee," or the buyer of the property, which is incorrect. In order to correct this error and further help clarify the intent of § 4110.2–3 regarding transfer of grazing preferences from one base property to another, an addition to the final rulemaking has been made in § 4110.2–3(c) because of public comments. The first sentence of the section in the final rulemaking has been corrected to provide that if a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred, and file a properly completed transfer application with the BLM for approval. This section was intended to give the authorized officer the flexibility necessary to allow for prudent action regarding the interaction between lenders, court actions, government actions, and permittee/lessee obligations.

Section 4110.2–4 Allotments.

This is a new section that was added in the proposed rulemaking by moving paragraph (d) in its entirety from § 4110.2–2. It was moved because it does not apply to specifying grazing preference. The change will be retained in the final rulemaking. Specific reasons for moving paragraph (d) and adding this section are discussed in § 4110.2–2 above.

Section 4110.3 Changes in grazing preference.

Several comments were received concerning changes in this section. A few commenters suggested removing the phrase "grazing preference" because they felt that it implied that livestock grazing would be preferred over other uses and that BLM would not allocate forage to uses other than livestock. Some commenters also felt the existing regulations are sufficient. The commenters also suggested that the title of the section be changed to "Changes in forage allocation." A few commenters also wanted to amend the section so that changes in active use could only be made following coordination, consultation, and cooperation with the affected grazing permittees. Finally, some commenters objected to the phrase "undue or unnecessary degradation" as applied to grazing use because it implied that grazing tends to cause "due and necessary degradation" and that grazing is accordingly, a destructive activity. It was also suggested that the phrase is not well defined and could lead to legal action to require clarification of the use of the phrase. It was suggested the phrase "undue or unnecessary degradation" be deleted and replaced with a different phrase. After consideration of all the above comments, it was decided, that the title of the section should be changed from "changes in grazing preference" to "changes in grazing preference status" in the final rule. There has been some confusion over the term "grazing preference." Grazing preference consists of both active use and suspended use. Grazing preference on particular allotments was established pursuant to the Taylor Grazing Act (43 U.S.C. 315 *et seq.*) based on historic use. It does not change. However, through land use planning and or monitoring the authorized officer may identify the need for changes in the preference status or mix of active versus suspended use. In response to the concerns regarding the requirement to coordinate, consult, and cooperate with permittees prior to any change in active use, it was concluded that § 4110.3–1(c) of the existing regulation sufficiently provides for this.

The recommendation of the commenters to delete the phrase "undue or unnecessary degradation" has been adopted and the phrase has been replaced with the phrase: * * * "unless the change is required in an applicable land use plan or is necessary to manage, maintain or improve rangeland productivity," as provided by sections 2(b)(2) and 4(b) of PRIA. The phrase "undue and unnecessary degradation" is used in FLPMA sections 302(b) and 602(c). It is a legal standard applicable in certain situations, for example, where grandfathered grazing or mining activities occur in wilderness study

areas. Used out of context in this rulemaking, it apparently has caused confusion and created the possible implication that normal grazing activity causes degradation of the range. The term is being deleted because its use here may be misleading. BLM of course remains subject to the provisions of sections 302(b) and 602(c) of FLPMA. At times, accordingly, the applicable legal standard may be one based on accordance of "undue and unnecessary degradation." However, the phrase has been replaced with language that more clearly indicated that changes in active use may be triggered by various management objectivies.

Section 4110.3–1 Increasing active use.

A few commenters were concerned about the use of the word "apportioned" rather than "allocation" in paragraphs (a), (b), and (c) of this section of the proposed rulemaking. They concluded that additional forage should be equally shared with all other uses. Some felt that paragraph (a) should be changed to allow only for nonrenewable allocation of forage, while others felt paragraph (c)(1) is unclear as to the order of priority for allocating additional forage. After reviewing these comments, it has been concluded that the word "apportioned" is proper in this instance because the "allocation" of land and uses is accomplished in the land use plan, and forage available to livestock grazing must then be apportioned or divided among competing permittees in an allotment. The forage available for livestock grazing is forage that was allocated to livestock in the land use plan.

The concern regarding whether an authorization should be renewable or nonrenewable should not be a problem if, in fact, the forage is available. It would not be used by the permittee, or lessee, and a secondary user would not be allowed to use that resource for an indefinite period of time. Therefore, the forage available could only be authorized for a short period of time on a nonrenewable basis. It also has been concluded that paragraph (a) of this section is adequate and the language in the proposed rulemaking has been adopted in the final rulemaking. After careful consideration of the comments expressing concern regarding paragraph (c)(1), it was concluded that the wording is clear. The intent of this paragraph is to give the first priority to those permittees/lessees who invest in rangeland improvements which result in additional livestock forage, according to their proportional share in providing for the improvement.

Section 4110.3–2 Modifying or suspending grazing preference.

Many comments were received concerning the modification or suspension of grazing preference made by the proposed rulemaking. Several suggested that the 1984 regulations should be retained with the additional language of the proposed rulemaking. Some commenters suggested that the change in the section's title does not reflect the need to reduce actual livestock numbers, and the title in the existing regulation is more concise and specific. Many believed that a permittee/lessee should be given the option of taking voluntary nonuse in the amount and period of time deemed necessary by all parties involved. A few commenters suggested retaining the section in the existing regulations, especially paragraph (b) pertaining to achieving multiple use management, because elimination of this section would make it more difficult for the Bureau to effect an actual reduction in livestock grazing. Other commenters were of the view that paragraph (c) is unnecessary. Finally, a few commenters fully supported the changes made by the proposed rulemaking, but recommended several minor modifications in the wording to provide for monitoring livestock grazing use before decreasing active use. They suggested that the BLM must use more than one monitoring element prior to effecting a decrease.

After careful consideration of the comments, it was determined that the final rulemaking will adopt a change in the title of this section by replacing the phrase "modifying or suspending grazing preference" with the phrase "decreasing active use". The title of the section, as modified, will more effectively explain the purpose of the section. It has also been determined that the concerns expressed by many of the comments regarding the elimination of multiple use management in the proposed rulemaking are ill-founded. It is the policy and intent of the Department of the Interior to strengthen the concepts of multiple use as provided for in the Federal Land Policy and Management Act. This policy is reflected in the land use planning process which provides for the management of livestock grazing along with all other uses on the public lands. However, as suggested by commenters, the final rulemaking has modified the section to clarify the policy. Paragraph (a) of the proposed rulemaking is adopted without change in the final rulemaking. Paragraph (b) has been modified in the final rulemaking to provide that when monitoring shows active use is causing an unacceptable level or pattern of utilization, or exceeds the livestock carrying capacity as determined through monitoring, active use shall be reduced, or management practices changed as necessary, to maintain or improve rangeland productivity. Paragraph (c) is modified in the final rulemaking to provide the flexibility needed to make adjustments in use levels on a timely basis. It will now indicate that, where active use is reduced the balance may be held in suspension or in nonuse for conservation purposes until it is determined that active use may resume.

Section 4110.3–3 Implementing changes in grazing preference.

A few comments concerning changes in grazing preference suggested that the existing regulations be retained, and objected to the concept of graduated reductions for livestock use regardless of existing resource conditions. Some commenters suggested changing the phrase "grazing preference" to "active use". After consideration of the comments, it was decided that the final rulemaking would change the title of this section from "implementing changes in grazing preference" to "implementing changes in active use." This change will make this title consistent with §§ 4110.3, 4110.3–1 and 4110.3–2. Further, in response to the comments, it was concluded that unless there is an emergency which will cause irreparable damage to the resource, the concept of gradually implementing changes in active use is prudent in light of needed flexibility for the livestock industry and lending institutions, and the likely difficulties that permittees might have in making rapid changes in operations.

Section 4110.4–1 Additional land acreage.

Several comments concerned the provisions of this section of the proposed rulemaking. Most suggested that the language of the existing regulations be retained but modified to give specific mention to "critical wildlife habitat and wild horses/burros." Others commented on the word, "apportioned" versus "allocated." These comments have been considered and it has been decided that the language of the proposed rulemaking should be modified to make clear that this section is discussing active use. This paragraph of the proposed rulemaking provides consistency with current policy and legislative guidance indicated in § 4130.1–2. The word "apportioned" is used in the final rulemaking to differentiate from the allocation process that occurs during the land use planning

process. The matter of wildlife and wild horses/burros habitat is also considered during the land use planning process.

Section 4120.1 Cooperative management agreement.

More comments were received concerning the cooperative management agreement than any other portion of the proposed rulemaking. Most favored the concept of cooperative management as being necessary to accomplish the goals and objectives of overall multiple use management and sustained yield by using livestock as one of the tools to manage vegetation resources. Most of the commenters favoring cooperative management did not specifically state that successful range management had to be accomplished by a cooperative management agreement, but felt cooperation is always superior to being in opposing and adversarial roles. Those commenters opposing the cooperative management agreement concept were concerned that the agency was relinquishing its authority and responsibility to manage the public lands. Most of those opposed also thought that the agreements gave too much discretion to private livestock interests and should not be used. It has been decided not to go forward at this time with a program of cooperative management agreements. Accordingly, the final rulemaking will remove from § 4120.1 the provision of the proposed rulemaking pertaining to cooperative management agreements. In order to bring the provisions of other sections into conformance with this change, those sections are being amended to remove all reference to cooperative management agreements. It should be noted that cooperative management agreements are used in other resource programs. Since the BLM began implementing its cooperative management policy, cooperative management agreements have been developed and implemented in cooperation with many user groups to manage other resources on the public lands, including wild horses and burros, wildlife, recreation, wilderness, and cultural values. Each of these agreements is a formal, written agreement between the Bureau of Land Management and the land user or user group for sharing management responsibilities of a resource.

Cooperative management with rangeland users has been a longstanding effort since it was first provided for under the Taylor Grazing Act of 1934 (43 U.S.C. 315 *et seq.*). Under section 2 of the Taylor Grazing Act, the Secretary of the Interior was directed to "make provisions for the protection, administration, regulation, and improvement of such grazing districts and * * * enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this Act * * * namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement and development of the range." Cooperation with public land users was further reaffirmed in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*). Section 307(b) of the Act authorizes the Secretary, subject to the provisions of applicable law, to enter into contracts and cooperative. agreements involving the management, protection and development of the public lands.

In accordance with these laws, cooperative management will continue to be a necessary and important part of BLM's range management program as well as other resource programs. It will be reflected in BLM's consultation and coordination with the affected parties. There are other established processes, and interagency agreements to facilitate coordinated management of livestock grazing and other resource activities, that do not reflect the confusion that has evolved with the cooperative management agreement initiative. Since the major objective of cooperative management can be achieved by other, better understood and accepted methods, it is not necessary to retain their use as described in the proposed rulemaking.

The provisions pertaining to cooperative management agreements have been removed from § 4120.1 and this section number is reserved in the final rulemaking.

Section 4120.2–3 Allotment management plans.

Several comments concerned allotment management plans (AMP); most favored their use. Some commenters objected to the AMP being featured as the only vehicle through which the land use planning and management objectives are achieved, and suggested that cooperative management agreements, experimental stewardship, coordinated resource management, and other cooperative efforts are equally important to achieve multiple use management objectives. After considering the comments, it was determined that allotment management plans meet the intent of section 402 (d) and (f) of FLPMA and the final rulemaking will adopt, without change, this section of the proposed rulemaking.

Section 4120.3–5 Assignment of range improvements.

The few commenters on this section of the proposed rulemaking approved the deletion of the phrase "fair market value" and the last sentence of the existing regulation. The commenters generally felt that the phrases were antiquated and unnecessary because the parties involved reach agreement on the value of the range improvements while contracting for the transfer of the grazing preference, and the authorized officer should not be a referee in a private business transaction. Without such an agreement there would not be a transfer or assignment. The final rulemaking has adopted without change the provisions of the proposed rulemaking.

Section 4130.1–2 Conflicting applications.

Most of the commenters on this section opposed the changes in the proposed rulemaking. Several of the commenters stated that although the changes were shown in the text of the proposed rulemaking, they had not been discussed in the preamble or supplementary information sections. The commenters also stated that deletion of the word "livestock" before the word "forage", and adding the phrase "for livestock" after "forage" made no sense. Objections were also made to deleting the word "allocate" and replacing it with the word "authorize". Other comments expressed the view that the amendments in the proposed rulemaking substituted a new definition for the phrase "historical use of the lands" and that deleting the current subparagraphs (b) through (f) would have far-reaching implications, and be subject to varying interpretations. They opposed these changes because they felt that such changes could lead to the exclusion of the public from the public lands. Another commenter stated that in other parts of the proposed rulemaking, the word "allocate" had been replaced with the word "apportion" and felt that it would be consistent to make the same change in this section rather than using the word "authorize".

After reviewing the comments, the Department of the Interior regrets the failure to discuss the change under the Supplementary Information section of the proposed rulemaking. It was an oversight. However, since the change was made in the body of the proposed rulemaking and did receive comments, it will be explained here as will changes made by the final rulemaking based on

the comments. In the proposed rulemaking the purpose of changing the phrase "livestock forage" to "forage for livestock" was to correct a misnomer. Forage is food for all grazing animals using the land, not just livestock. However, as used in these rulemakings it indicates that a determination has been made that additional forage is available, with some of it available for livestock. To utilize this additional forage for livestock grazing, the BLM accepts applications from grazing permittees who are qualified to use the forage for their livestock. This may result in competing applications. In that case the authorized officer must then determine how much forage to "authorize" to either one or all of the permittees. The word "authorize" is used instead of "allocate" or "apportion" because the latter are used for providing for or allocating forage to all grazing animals during the land use planning process. Paragraph (a) was revised by the proposed rulemaking because the section and paragraph citation in the 1984 regulations were incorrect. Instead of § 4130.2(1)(d), which doesn't exist, the citation should have been § 4130.2(d), which provides for permittees or lessees holding expiring grazing permits or leases to be given first priority for new permits or leases.

Section 4130.6 Terms and conditions.

Only a few comments were received on this section. They recommended that the phrase "control identified in land use plans" in the 1984 regulations be retained. After consideration of these comments, it was decided that the final rulemaking would retain the word "administration" used in the proposed rulemaking, because BLM also administers grazing on lands for which it does not have complete management responsibility, i.e., national recreation areas, national parks, and national wildlife refuges. The word "administration" is needed to give the flexibility necessary to manage the grazing program on these other lands.

Section 4130.6–1 Mandatory terms and conditions.

Numerous comments were received on this section, most of them opposing the proposed rulemaking for the same reasons as discussed previously in §§ 4100.0–5 and 4110.3 regarding the phrases "livestock grazing capacity" and "undue and unnecessary degradation." After consideration of the comments, it has been decided that the final rulemaking will adopt the phrase "livestock carrying capacity" as used and defined by the Society for Range Management, and delete the reference to "undue and unnecessary degradation" for the reasons discussed previously with reference to section 4110.3. The final rulemaking will indicate that the authorized livestock grazing use shall not exceed the livestock carrying capacity as determined through monitoring and adjusted as necessary under §§ 4110.3, 4110.3–1 and 4110.3–2 of this Title.

A few commenters were concerned about the removal of §§ 4120.2–1(c) and 4130.2(d)(3) of the grazing regulations as they existed prior to the effective date of the final rulemaking of March 22, 1984. Section 4120.2–1(c) provided that "all permits and leases shall be made subject to cancellation, suspension, or modification, as required by land use plans, and subject to applicable law. Section 4130.2(d)(3) provided that "Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions." The commenters expressed concerns that by removing these sections Interior intended to eliminate authority to cancel or suspend permits when required by land use planning, and intended to make consistency between land use plans and grazing permits discretionary rather than mandatory. The Interior Department does not, by removing these sections, intend to undermine consistency between land use planning and livestock grazing programs and activities.

It is not always necessary, however, to cancel, suspend or modify a permit or lease to achieve land use plan objectives. In actual practice, changes in grazing management practices and actions such as land treatments, water developments, fencing or other practices may achieve land use plan objectives without requiring a change in the status of the grazing preference or in terms and conditions of the permit or lease. The authorized officer retains authority under § 4130.6–1(b) to cancel, suspend or modify a grazing permit or lease where such action is needed to achieve land use plan objectives. Moreover, § 4100.0–8 of this final rulemaking provides that grazing program activities and management actions approved by the authorized officer "shall be in conformance with the land use plan." These provisions, taken together, effectively require consistency between the land use plan and the grazing activities. Accordingly, §§ 4120.2–1(c) and 4130.2(d)(3) continue to be deleted from the grazing regulations.

Section 4130.7–1 Payment of fees.

Many comments were received regarding the payment of fees. They suggested that the wording in paragraph (e) be changed to read "failure to pay the grazing bill within 30 days of the receipt of the bill or date of turnout, whichever is latest, shall result in a late fee assessment of $25 or 10% of the bill, whichever is greater. Failure to make payment within 30 days may result in action by the authorized officer under § 4160.1–2". Several other commenters suggested that $25 or 10% of the bill is not enough penalty for late payment, while others believed that the trespass/late fee provisions of the existing regulations are sufficient to deter the late payment of grazing fees.

This section was designed to reaffirm the longstanding policy of the BLM, and provisions in section 315(b) of the Taylor Grazing Act, which require the grazing bill be paid upon issuance, even under actual use procedures. The payment of grazing fees at the opening of the grazing season or period, unless otherwise provided for, is due on or before the due date specified in the grazing bill. The user owes the United States for the privilege of using the forage which is apportioned to the user by the date specified in the permit/lease. This payment authorizes forage to be used only by a particular user, and is obligated to that use unless changed either on the application of the permittee/lessee, or by the authorized officer for emergency conditions. Therefore, the final rulemaking will specify in paragraph (d) that the payment is due on the due date specified in the grazing bill. Further, the reference to cooperative management agreements in paragraph (d) is removed because of the removal of provisions pertaining to cooperative management agreements from § 4120.1 of the final rulemaking.

The new paragraph (e) added by the proposed rulemaking has been adopted by the final rulemaking, with some modification as suggested by the comments. The new paragraph (e) will provide that if payment is not made within 15 days of the due date specified in the bill, the late fee assessment will be $25 or 10% of the grazing bill, which ever is greater, not to exceed $250. Payments made more than 15 days after the due date shall include the appropriate late fee assessment. Both the grazing fee and the late fee assessment must be paid within 30 days from the due date shown on the original bill. Failure to do so may be a violation of § 4140.1(b)(1), and result in action by the authorized officer under § 4150.1 and 4160.1–2. These provisions are in accordance with financial management procedures of the Federal Government.

The late fee is a penalty based on administrative costs of auditing the late payment by grazing operators, notifying the operator that payment is late and tracking the progress of late payments. This procedure is designed to be an incentive to livestock operators to make payment of their grazing bill when due. It further provides for a penalty that is less cumbersome to administer than the present Bureau procedure of canceling the grazing bill and initiating unauthorized livestock use actions. This procedure will accommodate extenuating circumstances associated with turn-out dates, climate changes, and personal problems inherent in the livestock industry. Program reviews by the General Accounting Office and Office of Inspector General in 1986 indicated a need to strengthen the provisions for late payments.

Section 4140.1 Acts prohibited on public lands.

Several comments were received concerning acts prohibited on public lands under paragraph (a)(3) regarding supplemental feeding. Most of the commenters objected to any supplemental feeding on the public lands because they felt it would provide for the continued presence of livestock on ranges where the vegetation was already overutilized. A few commenters agreed with this viewpoint, but did feel it might be necessary in emergencies. Another commenter expressed concern over the requirement for approval prior to supplemental feeding because prior approval is not practical when harsh weather conditions demand immediate feeding. In reviewing all of the comments, it was determined that there is much confusion concerning the term "supplemental feeding", and the difference between "supplemental feeding" and "maintenance feeding." To overcome this confusion, the final rulemaking clarifies these terms in order to provide an understanding that maintenance feeding is not allowed on public lands, and supplemental feeding will only be allowed at the discretion of the authorized officer. The use of rangeland during certain times of the year can result in vitamin, mineral, and protein deficiencies in the grazing animal because the existing forage or plants (forage species) may not provide these elements during the nongrowing season. The rangelands are generally capable of supplying all the fiber and roughage material necessary for a subsistence diet, but some supplement may be needed to help maintain an animal's health just as humans may need mineral supplements and vitamins to maintain their health. Examples of supplements for grazing animals are salt, minerals, vitamins and some forms of protein which are usually provided to them in block or liquid form to correct deficiencies observed in the animal's diet.

In contrast to supplemental feeding, maintenance feeding is supplying feed or additional forage such as hay, grains, and straw to range animals when available forage is too limited to meet their minimum daily requirement. BLM has always considered maintenance feeding damaging to rangelands that results in over-utilization of existing vegetation, soil compaction, and poor use patterns due to concentration of animals in a specific area. BLM has prohibited maintenance feeding and concurs with commenters that this practice should not be allowed on public rangelands except during emergencies. This final rulemaking does not amend the language of the existing regulations.

Paragraphs (b)(7) and (b)(8) of the existing regulations have been deleted from § 4140.1 of the final rulemaking as discussed in the Notice published in the **Federal Register** on July 20, 1987, (52 FR 27321). These paragraphs provided that permittees who violate laws concerning the management of wild free-roaming horses and burros or who violate other federal or state environmental laws may be subject to civil and criminal penalties under §§ 4170.1 and 4170.2. Many comments were received suggesting these provisions should not be deleted because, ranchers who violate environmental laws should not be allowed to retain their grazing permits/leases. The commenters took the view that BLM must have the authority, and is required by section 302(c) of the Federal Land Policy and Management Act, to revoke grazing privileges for violations of all environmental laws. The commenters further contended that the government agency which regulates use of the public lands should institute such control. They expressed concern that these provisions were deleted, while similar provisions pertaining to penalties for violations under the Bald Eagle Protection Act and the Endangered Species Act are retained at § 4170.1–3. Many other commenters took the position that paragraphs (b)(7) and (b)(8) should be removed because they discriminated against the livestock industry. These commenters contended that, in effect, these provisions single out the grazing permittees/lessees for double penalties in that this group is subject to possible revocation of the grazing permit or lease in addition to the penalties applicable to anyone who violates these environmental laws.

In reviewing the comments, it was noted that some commenters concluded that removing the specific references at paragraphs (b)(7) and (b)(8) to the wild horse and other environmental laws was intended to suggest that public land permittees and lessees are not subject to penalties under the environmental laws This is not the case. Removing these paragraphs was not intended to shield permittees and lessees from penalties under laws other than those specified at § 4170.1–3. Rather, it was determined that it is not necessary to include specific grazing penalties for violations of the Wild Horse and Burro Protection Act and Federal and State environmental laws. Enforcement or penalties against grazing permittees or lessees would be premised on the provisions of those laws just as with any other person who violated them. However, the Bald Eagle Protection Act and the Endangered Species Act have specific provisions concerning violations by grazing permittees and it is therefore appropriate to include a specific reference to those laws in the regulations. The final rulemaking deletes paragraphs (b)(7) and (b)(8) of this section. Section 402(a) of the Federal Land Policy and Management Act provides authority for inclusion in permits and leases of such terms and conditions as the Secretary deems appropriate. Therefore, when conditions warrant protection of the land or resources from livestock grazing, appropriate protection provisions will be included in the terms and conditions of the grazing lease or permit. Violating the special protective terms and conditions of a permit/lease is prohibited by § 4140.1(a)(1) and is subject to penalty under § 4170.1. In addition, interfering with lawful uses or users is prohibited by §4140.1(b)(7) and may result in the civil and criminal penalties under §§ 4170.1 and 4170.2. FLPMA provides flexibility to the authorized officer on a case-by-case basis to include provisions for suspension, revocation or cancellation in grazing or other permits. The Department also concluded that the inclusion of paragraphs (b)(7) and (b)(8) in § 4140.1 is unnecessary because there is statutory authority provided to the Secretary of the Interior, not only in section 402(a) of FLPMA, but also in section 302(c), to include special terms and conditions in permits and leases to provide for the management and protection of any environmental element. Consequently, § 4130.6 can be used as necessary to regulate livestock grazing for protection of any environmental values. These provisions

are fully adequate to protect against or to remedy violations of the wild horse or other environmental laws that would have particular harm in the context of grazing or would undermine range management objectives or the purposes of the various range management statues. To the extent that violations unrelated to grazing or range management occur, these violations should be subject to the penalties provided in the environmental laws and applicable to anyone who violates them. And finally, it should be clearly understood that BLM does not have jurisdiction for the enforcement of State laws.

Section 4150.3 Settlement.

Many commenters on settlement of unauthorized grazing use expressed concern that the proposed penalties were too low, when based on the fee for grazing, and would encourage unauthorized use rather than stop it. Others felt that penalties are too high, especially for nonwillful violations, which they said should be the value of forage consumed based on the grazing fee rate. Still others suggested that the word "shall" should be used in place of the word "may" as proposed. After careful consideration of all comments received, it was determined that the settlement section of the proposed rulemaking should be modified in the final rulemaking to use essentially the same wording used in § 4150.3 of the existing regulations. However, the final rulemaking does remove the "repeated nonwillful" provisions because nonwillful violations are often beyond the control of the livestock operator, and additional penalties would be inappropriate in most cases. If nonwillful unauthorized use is attributable to negligence by the livestock operator, it may be considered willful. The final rulemaking also adopts the word "shall" instead of "may" as suggested by the commenters, and the penalty for nonwillful violations will be the value of the forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture. This change continues the language of the existing regulation. The penalties for willful and repeated willful violations will be two and three times, respectively, the penalty for nonwillful violations.

Section 4170.1–3 Federal or State laws or regulations.

As discussed previously under section § 4140.1 the final rulemaking will remove paragraphs (b)(7) and (b)(8) pertaining to revocation or termination of livestock grazing leases, permits or other agreements for violations of the Wild Free Roaming Horse and Burro Protection Act and Federal and State environmental laws. Section 402(a) of FLPMA provides that permits and leases shall be subject to such terms and conditions as the Secretary deems appropriate. Section 4130.6–2 of the existing regulations currently provides authority for the authorized officer to include whatever terms and conditions are necessary in a permit/lease for achieving management objectives, proper range management, or the orderly administration of the public rangelands. If specific provisions for management are required to protect wild horses and burros or other environmental enhancements, the specific management standards and stipulations can be included as terms and conditions of a permit or lease. Violation of the terms and conditions of a permit or lease is a prohibited act in § 4140.1(a)(1) and is subject to civil penalties under § 4170.1.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Wilton A. Peterson and Dee R. Ritchie, Division of Rangeland Resources, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

Based upon an environmental assessment and a finding of no significant impact, it is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a negative effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of this final rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned clearance numbers: Grazing Application 1004–0005, Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Actual Grazing Use Record 1004–0051; and Cooperative Agreement 1004–0068.

Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Actual Grazing Use Record 1004–0051; and Cooperative Agreement 1004–0068.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior

March 4, 1988.

PART 4100—[AMENDED]

1. The authority citation for Part 4100 is revised to read.

Authority: 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 et seq., 43 U.S.C. 1181d, unless otherwise noted.

2. Section 4100.0–5, is amended by removing the definition of "cooperative management agreement" and revising the definitions of "actual use", "land use plan", "monitoring", and "range improvement" to read

§ 4100.0–5 Definitions.

* * * * *

"Actual use report" means a report of the actual livestock grazing use submitted by the permittee or lessee.

* * * * *

"Land use plan" means a resource management plan or management framework plan which is being followed until replaced by a resource management plan. These plans are developed in accordance with the provisions of the Federal Land Policy and Management Act and establishes management direction for resource uses of public lands.

* * * * *

"Monitoring" means the periodic observation and orderly collection of data to evaluate:

(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives.

"Range improvement" means an authorized activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock, wild horses and burros, and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

* * * * *

3. Section 4100.0–5 is further amended by removing the definition for "livestock grazing capacity," and adding, in alphabetical order, the following definitions:

"Active use" means the current authorized livestock grazing use.

"Actual use" means where, how many, what kind or class of livestock, and how long livestock graze on an allotment.

"Livestock Carrying Capacity" means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.

"Rangeland studies" means any study methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

"Trend" means the direction of change over time, either toward or away from desired management objectives.

"Utilization" means the percentage of forage that has been consumed by livestock during a specified period and the livestock grazing utilization pattern on the allotment.

4. Section 4100.0–8 is added to read as follows:

§ 4100.0–8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0–5(b).

5. Section 4110.2–1 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 4110.2–1 Base property.

* * * * *

(d) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2–3, to the new owner or person in control of that base property.

(e) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

6. Section 4110.2–2 is revised to read as follows:

§ 4110.2–2 Specifying grazing preference.

(a) Grazing preference shall be specified in all grazing permits or grazing leases. It shall include both active use and suspended use. Active use shall be based upon the amount of forage available for livestock grazing established in the land use plan as defined in 43 CFR 1601.0–5(k).

(b) The grazing preference specified shall attach to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

§ 4110.2–3 [Amended]

7. Section 4110.2–3 is amended by revising paragraph (c) to read:

* * * * *

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. If the applicant leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

* * * * *

8. Section 4110.2–3 is further amended in the first sentence of paragraph (e) by changing the word "deposition" to "disposition."

9. Section 4110.2–4 is added to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with permittees or lessees, the authorized officer may designate and adjust allotment boundaries.

10. In § 4110.3 the section heading is revised and text is added to read as follows:

§ 4110.3 Changes in grazing preference status.

The authorized officer shall periodically review the grazing preference specified in a grazing permit or grazing lease and may make changes in the grazing preference status. These changes shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or necessary to manage, maintain or improve rangeland productivity.

11. Section 4110.3–1 is revised to read as follows:

§ 4110.3–1 Increasing active use.

Additional forage may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives.

(a) Additional forage temporarily available for livestock grazing use, including forage which is temporarily available within an allotment because of a change in grazing use under § 4130.1–1, may be apportioned on a nonrenewable basis.

(b) Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in

satisfaction of grazing preferences to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.

(c) After consultation, cooperation, and coordination, additional forage on a sustained yield basis available for livestock grazing use over and above the preference(s) of the permittee(s) or lessee(s) in an allotment may be apportioned in the following priority to:

(1) Permittee(s) or lessee(s) in proportion to the contribution or efforts which resulted in increased forage production;

(2) Permittee(s) or lessee(s) in proportion to the amount of their grazing preference; and/or

(3) Other qualified applicants under § 4130.1–2 of this title.

12. Section 4110.3–2 is revised to read as follows:

§ 4110.3–2 Decreasing active use.

(a) Active use may be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring shows active use is causing an unacceptable level or pattern of utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives.

(c) Where active use is reduced it shall be held in suspension or in nonuse for conservation/protection purposes, until the authorized officer determines that active use may resume.

13. Section 4110.3–3(a) is revised to read as follows:

§ 4110.3–3 Implementing changes in active use.

(a) Changes in active use in excess of 10 percent shall be implemented over a 5-year period, unless after consultation with the affected permittees or lessees and other affected interests, an agreement is reached to implement the increase or decrease in less than 5 years.

* * * * *

14. Section 4110.4–1 is revised to read as follows:

§ 4110.4–1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under § 4130.1–2 of this title.

15. Section 4120.1 is removed and reserved.

§ 4120.1 [Reserved]

§ 4120.2 [Amended]

16. Section 4120.2, as amended on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986 edition of the Code of Federal Regulations, is removed.

17. Sections 4120.2–1(c) and 4130.2(d)(3) are removed in their entirety. These sections had read as follows:

§ 4120.2–1 Mandatory terms and conditions.

* * * * *

(c) All permits and leases shall be made subject to cancellation, suspension, or modification, as required by land use plans, and subject to applicable law.

* * * * *

§ 4130.2 Grazing permits or leases.

* * * * *

(d) * * *

(3) Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions.

18. A new § 4120.2 is added to read:

§4120.2–3 Allotment management plans.

When allotment management plans are developed, the following provisions apply:

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and other affected interests. The allotment management plan shall include terms and conditions under §§ 4130.6, 4130.6–1, 4130.6–2 and 4130.6–3 of this title, and shall prescribe the livestock grazing practices necessary to meet specific multiple-use management objectives. The plan shall specify the limits of flexibility within which the permittee or lessee may adjust operations without prior approval of the authorized officer. The plan shall provide for monitoring to evaluate the effectiveness of management actions in achieving the specific multiple-use management objectives of the plan.

(b) Private and State lands shall be included in allotment management plans with the consent or at the request of the parties who own or control those lands.

(c) Completed allotment management plans shall be incorporated into the terms and conditions of the affected grazing permits and leases.

19. Section 4120.3–5 is revised to read as follows:

§ 4120.3–5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2–3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

20. Section 4130.1–2 introducing text is amended by removing from where it appears in the first sentence the phrase "livestock forage" and replacing it with "forage for livestock", by removing from where it appears in the first sentence the work "allocate" and replacing it with "authorize," and by revising paragraph (a) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(a) Historical use of the public lands (see § 4130.2(d)).

* * * * *

§ 4130.4–1 [Amended]

21. Section 4130.4–1, paragraph (b) is amended by removing from where it appears in the fourth line of the first sentence the work "grazing" and replacing it with the word "carrying"

§ 4130.6 [Amended]

22. Section 4130.6 is amended by removing from where it appears the phrase "control identified in land use plans" and replacing it with the word "administration."

§ 4130.6–1 [Amended]

23. Section 4130.6-1(a) is amended by removing from where it appears in the second sentence the phrase "grazing capacity and may be limited or excluded to the extent necessary to achieve the objectives established for the allotment." and replacing it with the phrase "carrying capacity as determined through monitoring and adjusted as necessary under §§ 4110.3, 4110.3–1 and 4110.3–2.

24. Section 4130.6–3, as added on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986

edition of the Code of Federal Regulations, is retained.

§ 4130.7-1 [Amended]

25. Section 4130.7-1, paragraph (d) is amended by removing from where it appears in the first and second sentences the phrases "upon issuance of billings. When billings are issued prior to the grazing season" and replacing it with the words "on the due date specified on the grazing fee bill. Payment", and by removing from where it appears in the third sentence the phrase "or cooperative management agreements".

26. In § 4130.7-1, paragraph (e) is added to read as follows:

§ 4130.7-1 Payment of fees.

* * * * *

(c) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of $25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed $250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within this 30 days may be a violation of § 4140.1(b)(1) and shall result in action by the authorized officer under §§ 4150.1 and 4160.1-2.

27. Section 4140.1 is amended by removing paragraphs (b)(7) and (b)(8), which had read as set forth below, and by revising paragraph (a)(3) to read:

§ 4140.1 [Amended]

(a) * * *

(3) Placing supplemental feed on these lands without authorization.

(b) * * *

(7) Violating any provision of Part 4700 of this subchapter concerning the protection and management of wild free-roaming horses and burros;

(8) Violating any Federal or State laws or regulations concerning conservation or protection of natural resources and cultural resources or the environment including, but not limited to, those relating to air and water quality, protection of fish and wildlife, plants, and the use of chemical toxicants;

28. Section 4150.3 is amended by revising the introductory paragraph and paragraphs (a), (b), and (c) to read as follows:

§ 4150.3 Settlement.

The authorized officer shall determine whether the violation is nonwillful, willful, or repeated willful. Where violations are repeated willful, the authorized officer shall take action under § 4170.1-1(b) of this title. The amount due for all settlements shall include the value of forage consumed as determined by paragraphs (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violation: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture.

(b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section."; and

* * * * *

29. A new § 4170.1-3 is revised to read as follows:

§ 4170.1-3 Bald Eagle Protection Act and Endangered Species Act.

Violation of the Bald Eagle Protection Act or the Endangered Species Act may result in penalty under § 4170.1-1 where:

(a) Public land administered by the Bureau of Land Management is involved or affected;

(b) Such violation is related to grazing use authorized by permit or lease;

(c) The permittee or leessee has been convicted or otherwise found to be in violation of the law or regulations by a court or by final determination of any agency charged with the administration of the law where no further appeals are outstanding.

30. Section 4170.1-4, as added on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986 edition of the Code of Federal Regulations, is removed.

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Federal Register

Tuesday
March 29, 1988

Part VII

The President

Proclamation 5780—Greek Independence Day: A National Day of Celebration of Greek and American Democracy

The Congressional Record

Part VII

The President

Proclamation 5710—Greek Independence Day: A National Day of Celebration of Greek and American Democracy

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

Presidential Documents

Title 3—

The President

Proclamation 5780 of March 25, 1988

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1988

By the President of the United States of America

A Proclamation

The United States and Greece are old allies and friends. Our nations and peoples are bound by interests, kinship, values, and a record of common achievement. Ancient Greek ideals of freedom fueled our own struggle for independence, and American friends supported Greece's effort to forge a modern nation in 1821.

Over the years, millions of Americans of Greek ancestry have enriched and strengthened the United States. In this century, Americans and Greeks fought and died together in three wars. The Truman Doctrine, which helped Greeks preserve their independence and launch Greece toward prosperity, is a proud achievement of American foreign policy. Today, Greece and the United States are partners in the NATO alliance, which has kept the peace and preserved freedom for nearly 40 years.

The democracy we so cherish began in Greece millennia ago. The grandeur the ancient Greeks left has endowed modern Americans and modern Greeks with democracy's promise of liberty. Today, the world is still inspired by the eternal values and aspirations for which modern Greeks reached when they began their quest for independence on March 25, 1821.

Saluting our common fealty to democracy and its defense, and recognizing the bonds between the United States and Greece, the Congress, by Senate Joint Resolution 218, has designated March 25, 1988, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 25, 1988, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy, and I urge all Americans to join in appropriate ceremonies and activities to salute the Greek people and Greek independence.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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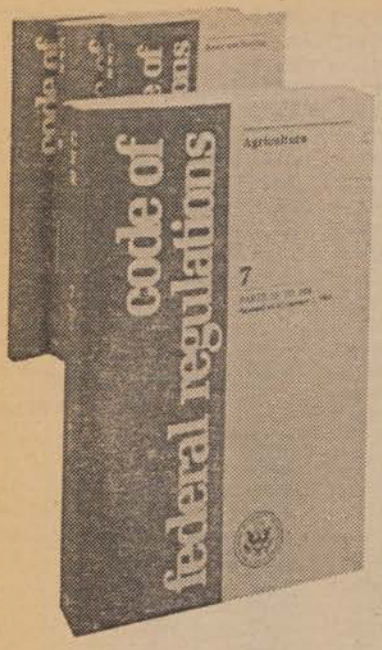
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