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Tuesday
May 3, 1988

Briefings on How To Use the Federal Register—
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inside cover of this issue.



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 26; at 9:00 a.m.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC

RESERVATIONS: Laurice Clark, 202-523-3517

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WHEN: June 10; at 9:00 a.m.

WHERE: Room 147-148,
Federal Building,
601 East 12th Street,
Kansas City, MO

RESERVATIONS: Call the St. Louis Federal Information Center;

Missouri: 1-800-392-7711

Kansas: 1-800-432-2934

NEW YORK, NY

WHEN: June 13; at 1:00 p.m.

WHERE: Room 305C,
26 Federal Plaza,
New York, NY

RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212-264-4810.

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Title 3—

Proclamation 5802 of April 28, 1988

The President

National Child Abuse Prevention Month, 1988

By the President of the United States of America

A Proclamation

All Americans have great reason to regret and to seek to repair the alarming incidence and prevalence of child abuse and neglect that continue throughout our country. Each year many American children suffer child abuse, and every year many perish in these attacks. The incidence of child abuse and neglect cuts across every income level and geographic area in our land.

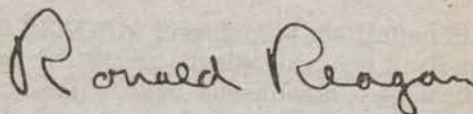
This tragic situation is unacceptable—and preventable. Dedicated individuals, private and civic groups, and government bodies are doing much to protect children, but, unfortunately, much remains to be achieved. Caring for children is, of course, the responsibility of parents; but neighbors, relatives, and friends must help protect children when parents or others attack or neglect them. We will truly prevent child abuse and protect our youngsters only to the extent that we cherish children as gifts from our Creator; foster deep and abiding reverence for the innocence and the God-given individual dignity and worth of every child; and treasure the sanctity of every human life.

It is in this spirit that we must assure America's children a loving, safe, and healthful environment. The members of professions, such as law enforcement, social work, church, medicine, mental health, and education, must continue to do their part, as must concerned individuals. Let all Americans reflect on our obligation to children and to families, and then let us put our compassion into action.

The Congress, by Senate Joint Resolution 246, has designated April 1988 as "National Child Abuse Prevention Month" 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 April 1988 as National Child Abuse Prevention Month. As we observe this time, let us all consider our responsibility for the wholesome and secure development of our children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, 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.



Presidential Documents

Proclamation 5803 of April 28, 1988

Loyalty Day, 1988

By the President of the United States of America

A Proclamation

Loyalty Day, May 1, is a day we set aside to promise allegiance to our country; to revere our heritage of individual freedom, limited government, and respect for every man's divinely bestowed dignity; and to reaffirm our sacred trust to preserve, for our children and for all generations to come, this blessed land of liberty we call America.

We Americans have both pledged and practiced loyalty from the moment the first patriots conceived the idea of a new and independent Nation where only freedom would reign—where people would live as free as God made them and where tyranny alone would never find welcome. We have given our loyalty generously, in times of peace and times of peril. That we will always do, God willing.

Loyalty Day says much about the meaning of our country. In other parts of the world, as we know, totalitarian states proclaim May 1 a day of fealty and require a show of loyalty from the people. No such demand is needed here, of course, because in America we are blessed to be able to govern ourselves; "We the People" are in charge, and we need give our loyalty not to self-appointed rulers but to liberty.

The self-government that protects our rights and liberties has been won and defended in each generation by loyal Americans. That remains true, of course, of our gallant service men and women at home and in a hundred foreign climes. It is true as well of every American in home or office, in factory or farm, in hall of government or place of worship, who calls upon the Author of Liberty to guide and bless our land; of every citizen who cherishes brotherhood and patriotism; of every boy and girl who begins the day with the Pledge of Allegiance to the Flag.

The allegiance we Americans owe, and give gladly, on Loyalty Day and throughout our lives, is to a land and an ideal that beckon human hearts today just as always, here and around the globe—the land of the free, where the only command and the only loyalty are freedom's way and freedom's sway.

To foster loyalty and love of country, the Congress, by joint resolution approved July 18, 1958 (72 Stat. 369; 36 U.S.C. 162), has designated May 1 of each year as "Loyalty Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1, 1988, as Loyalty Day, and I call upon all Americans and patriotic, civic, fraternal, and educational organizations to observe that day with appropriate ceremonies. I also call upon all government officials to display the flag of the United States on all government buildings and grounds on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, 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

[FR Doc. 88-9833

Filed 4-29-88; 12:17 pm]

Billing code 3195-01-M

Presidential Documents

Proclamation 5804 of April 29, 1988

National Arbor Day, 1988

By the President of the United States of America

A Proclamation

"He who plants a tree / Plants a hope," wrote Lucy Larcom years ago in her poem, "Plant a Tree"; that thought has surely motivated every American who has ever celebrated Arbor Day, given his neighborhood and Nation the lovely and lasting gift of trees, or sought to conserve our natural forest heritage. In this spirit we can all join in observing an Arbor Day in which we resolve to renew and expand our knowledge of and appreciation for trees and our understanding of the importance of trees and forests to our country and to the entire world.

In the last century, Americans began to realize the wisdom and the necessity of replenishing our supply of trees for their many natural benefits and so that our use of wood for fuel, lumber, and other products would not impoverish future generations. The idea of Arbor Day caught the imagination of many people; for example, on the first Arbor Day, in Nebraska in 1872, citizens of that State planted a million trees, and they added about 350 million more in the next 16 years.

This tradition continues, on Arbor Day and every day; we Americans have planted more trees each year for the last 6 years, and last year's total acreage of trees planted was a record. Arbor Day remains a time for planting and caring for trees in our cities, towns, and countryside, and it should also remind us to learn more about trees and forests and how to protect them at home and guard against desertification and destruction abroad.

Our celebration of Arbor Day should always be tinged with the spirit that the 19th-century poet Henry Cuyler Bunner captured so well in "The Heart of the Tree":

What does he plant who plants a tree?
He plants, in sap and leaf and wood,
In love of home and loyalty
And far-cast thought of civic good—
His blessings on the neighborhood
Who in the hollow of His hand
Holds all the growth of all our land—
A nation's growth from sea to sea
Stirs in his heart who plants a tree.

The Congress, by Senate Joint Resolution 247, has recognized the last Friday of April 1988 as "National Arbor Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, April 29, 1988, as National Arbor Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

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

Ronald Reagan

[FR Doc. 88-9918

Filed 4-29-88; 4:44 pm]

Billing code 3195-01-M

Presidential Documents

Executive Order 12638 of April 28, 1988

Delegation of Functions Relating to the Implementation of the Inter-American Convention on Letters Rogatory and Additional Protocol

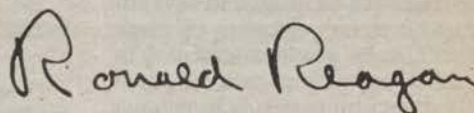
On October 9, 1986, the Senate gave its advice and consent to ratification of the Inter-American Convention on Letters Rogatory and Additional Protocol. The instrument of ratification was signed by the President on November 10, 1986. The Convention and Additional Protocol require that contracting states designate central authorities to give effect to the Convention's provisions.

In order that the Government of the United States of America may give full and complete effect to the Convention and Additional Protocol, it is expedient and necessary that the Department of Justice perform certain functions.

NOW, THEREFORE, by virtue of the authority vested in me by section 301 of Title 3 of the United States Code and as President of the United States of America, it is ordered as follows:

Section 1. *Designation of United States Central Authority.* The Department of Justice is designated as the Central Authority to transmit and process letters rogatory and to otherwise proceed in conformity with applicable provisions of the Convention and Additional Protocol.

Sec. 2. *Additional Designations.* The Department of Justice is authorized to make additional designations provided for in the Convention and Additional Protocol.



THE WHITE HOUSE,
April 28, 1988.

[FR Doc. 88-9834

Filed 4-29-88; 12:20 pm]

Billing code 3195-01-M

DECLARATION OF PRINCIPLES

Approved by the Board of Directors, April 10, 1900

Declaration of Principles Relating to the Interpretation of the
Inter-American Convention on Eastern Property and Rights

The Board of Directors of the American Land Title Association, in its capacity as the representative body of the land title industry in the United States, has adopted the following principles as a guide in its interpretation of the Inter-American Convention on Eastern Property and Rights, which was signed at Washington, D.C., on April 10, 1900.

1. The Convention is intended to promote uniformity in the interpretation of the laws of the United States and the laws of the other countries which are parties to the Convention.

2. The Convention is intended to promote uniformity in the interpretation of the laws of the United States and the laws of the other countries which are parties to the Convention.

3. The Convention is intended to promote uniformity in the interpretation of the laws of the United States and the laws of the other countries which are parties to the Convention.

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6. The Convention is intended to promote uniformity in the interpretation of the laws of the United States and the laws of the other countries which are parties to the Convention.

Charles C. Rogers

THE WHITE HOUSE
WASHINGTON
April 10, 1900

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Rules and Regulations

Federal Register

Vol. 53, No. 85

Tuesday, May 3, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Reporting Participation and Priority Data

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Special Supplemental Food Program for Women, Infants and Children (WIC) regulations by revising the requirement that State agencies report the category and nutritional risk priority of persons to whom they have made program benefits available. State agencies will be required to submit this information: (1) With respect to persons *participating* in the Program rather than to persons *enrolled* in the Program, as required under current regulations; and (2) *quarterly* rather than *semiannually*, as required under current regulations. All State agencies will be required to complete their transitions to this revised reporting requirement by September 30, 1988. The intent of this revision is to improve the quality of reported WIC participation and priority data. This will contribute to more effective program management and improve the operation of the new funds allocation formulas, promulgated at 52 FR 25182 (July 2, 1987) and 53 FR 2213 (January 27, 1988).

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1017, Alexandria, Virginia 22302. (703) 756-3746.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291 and has been classified to be not major. The Department does not anticipate that this rule would have an annual impact on the economy of \$100 million or more. This rule would not result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Nor would this rule have 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.

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has determined that this rule will not have a significant economic impact on a substantial number of small entities. The reporting and recordkeeping requirements contained in this rule have been reviewed and approved by the Office of Management and Budget (OMB No. 0584-0347) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 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, and final rule related notice published June 24, 1983 (48 FR 29114)).

Background

Current Reporting Requirements

Paragraph 246.25(b)(2) of the current Program Regulations, 52 FR 21232, 21238 (June 4, 1987), instructs State agencies to report semiannually the number of persons enrolled in the Program by category within each priority level. (As indicated in the regulation, categories are pregnant, breastfeeding, and postpartum women, infants and children; priority levels are those established at 7 CFR 246.7(d)(4).) This reporting requirement was first promulgated through a regulatory

amendment published February 13, 1985, at 50 FR 6108, 6145, and the first reports submitted by State agencies presented the composition of their WIC enrollments as of October 1985. At that time, the Department envisioned using the priority/category data to monitor State agencies' caseload management efforts. Caseload management has assumed greater importance in recent years. State agencies' use of available resources to accomplish the WIC Program mission requires that they use their WIC food grants as efficiently and effectively as possible. The Department considers the targeting of Program benefits to persons at greatest nutritional risk (and thus at the highest priority levels) to be the indicator most reflective of the efficiency and effectiveness with which a State agency manages its grant.

The semiannual reporting frequency was deemed appropriate for gathering priority data for caseload management purposes. Since most categories of persons enrolled in the WIC Program are certified for periods of approximately 6 months, State agencies could not be expected to show substantial progress in targeting at more frequent intervals.

In addition to the reporting frequency, another decision made in 1985 involved the type of data to be gathered. State agencies generally maintain two types of data on persons to whom they have made Program benefits available: The number of persons participating and the number of persons enrolled. The Program regulations currently define participation (by all categories of persons other than breastfed infants) as the receipt of supplemental foods or food instruments, 7 CFR 246.2, 52 FR 25182, 25189-90 (July 2, 1987); enrollment refers to the number of persons on the Program and thus authorized to receive supplemental food or food instruments. State agencies generally obtain participation data by counting food instruments issued each month. Enrollment, on the other hand, is generally drawn from the State agency's caseload data masterfile. The Department has long required State agencies to report participation by women, infants and children and all State agencies have systems in place to do so. Nevertheless, feedback obtained from State agencies indicated that data on participants' priority assignment was generally available only in caseload

data masterfiles (enrollment data), not in food delivery data files (participation data). Systems changes to generate enrollment data by priority were therefore perceived as less burdensome than reprogramming food delivery data systems to generate the priority classification of persons to whom supplemental food or food instruments had been issued. Accordingly, the Department elected to require that State agencies report enrollment rather than participation by category and priority.

Need for Improved Reporting

Since the inception of this semiannual priority reporting requirement, the Department has worked with State agencies to increase the proportion of their caseloads in the highest priority groups. Both Department and State agencies have relied upon the priority enrollment data in making a wide range of caseload management decisions. State agencies consider the priority/category composition of local agencies' existing caseloads in determining the allocation of available caseload slots. The Department performs analyses of State agencies' caseloads, including caseload priority composition in order to identify those most likely to benefit from technical assistance in caseload management. In addition, the Department used the priority enrollment data to track each State agency's targeting progress over time.

More recently, the Department's concern for the most effective use of available resources fueled an initiative to further promote targeting through the funding process. Targeting is now considered in the allocation of funds to State agencies for WIC food and administrative and program services costs.

Description of Proposed Rule

Concerns were raised over the data to be used in the funds allocation process. The Department agreed with the concern expressed that data used in funds allocation must meet higher standards of accuracy, timeliness and comparability than has hitherto been acceptable. In response, the Department proposed to revise the reporting requirement that State agencies report the category and nutritional risk priority of persons to whom they have made program benefits available. 52 FR 45457 (November 30, 1987). It was proposed that State agencies be required to submit this information: (1) With respect to persons participating in the Program rather than to persons enrolled in the Program as required under current regulations; and (2) quarterly rather than semiannually, as required under current

regulations. It was also proposed that State agencies be required to complete their transitions to this revised reporting requirement by September 30, 1988.

Comments Received on the Proposed Reporting Revisions

A total of 195 letters were received which provided comments on the proposed reporting revision. The commentors represented 1 regional office, 20 State agencies, 59 local agencies (representing 2 states) and 115 interested parties. Following is a discussion of the comments received in response to the proposed rule for WIC program reporting revisions.

General Issues

Of the 195 comment letters received, 21 generally supported the proposal. The vast majority (169) of the letters opposing the proposal were provided by commentors representing one State; these were local agencies and interested parties. The basic reason given by these commentors was that implementation would require costly ADP system modifications before the revised reporting requirements could be satisfied.

Second, the State agency believed that implementation of reporting revisions would also place an increased administrative burden on local agencies. It was suggested by one commentor that the proposed reporting revisions are not the best means to target reporting and recommended the status quo be maintained until a better solution is discovered.

Basic approval or disapproval could not be determined for one comment letter received. Instead, that letter requested clarification regarding procedures on how the revised report data will be submitted. The writer asked whether initial and closed-out reports will be required. It is the Department's intent to require initial and closed-out reports.

The commentors expressed supportive or opposing views on three broad requirements that the Department proposed to adopt. State agencies would be required to: (1) Report the category and nutritional risk priority of persons participating in the Program; (2) submit report data quarterly; and (3) complete their transitions to this revised reporting requirement by September 30, 1988.

Reporting Participation by Category and Priority versus Enrollment

Seventy-one percent of the commentors who supported the proposal expressly supported the change from reporting enrollment data to reporting participation data. The overall

consensus was that participation data is more accurate than enrollment data. One reason given for this belief is that enrollment data is not consistently gathered using the same method and is therefore less comparable from State to State. Thus, commentors strongly supported the Department's efforts to standardize report data. They emphasized the importance of having a uniform and valid data base in light of the new funding formulas.

Three of the commentors discussed a related issue which concerns State agencies reporting participation by priority at certification without having the flexibility to update this status, if necessary, at the time the data is collected and submitted to FNS. For example, it was explained that for reporting purposes, State agencies will need to establish procedures for maintaining participants' "original" priority status even though the category and priority may have changed.

Consequently, this may become difficult for State agencies to manage.

The issue of collecting and reporting participation by category and priority at the time of certification was researched extensively prior to being proposed. It was recognized that priority is determined at certification. Priority does not change automatically when category changes. Rather, priority should be changed only when medical data is updated and results in a new priority determination. For example, a participant who was under age 1 at the time of certification and who reaches his first birthday during the certification period will change categories during the certification period, but his priority status will remain that assigned at the time of certification. Thus, although children over the age of 1 may not normally be considered Priority I, the child's Priority I infant status, assigned at the time of certification, will carry over until the end of the certification period. Changes in priority status during certification periods do not occur automatically, then, but only under special circumstances. Therefore, maintenance by State agencies of participants' status at the time of certification should not be unduly burdensome. Furthermore, requiring State agencies to report priority assigned at the certification date yields data that is most representative of the State's efforts to serve the highest priority individuals. State agencies have more control over the priority levels of their caseload as determined at the time of certification and less control over changes in priority status occurring during the certification period. The

number of persons certified at high priority levels is to some extent responsive to efforts by State agencies to attract eligible high-priority persons to the Program, while changes in status during certification periods are less relevant.

The Department has decided to retain the provision requiring the reporting of participation data as proposed. The Department agrees with the commentors who stated that data used in funds allocation must meet higher standards of accuracy, timeliness and comparability than has hitherto been acceptable. The funds allocations generated by a formula using currently available data may reflect not only the operation of the formula itself, but also the unique characteristics of individual State agency reporting systems. Feedback obtained through comments and consultations indicated that some State agencies believed the new formula's results would not be fully equitable without improvements in the quality of the data used in generating those results.

Change from Semiannual to Quarterly Reporting

Thirteen (62 percent) of the commentors who supported the proposal also expressly favored collecting and reporting the data quarterly versus semiannually. These commentors strongly believed that reporting participation data on a quarterly basis would greatly improve the accuracy of the data being submitted. One comment received from a State agency specifically stated that the current averaging of semiannual reports has reduced the impact of the improvements to its caseload composition which the State agency has achieved. In general, the commentors stated that quarterly reporting would be a better and more accurate reflection of State agencies' caseload size and composition. Quarterly reporting will allow State agencies to capture conditions such as seasonal fluctuations which can affect caseload size and/or composition.

Based on the comments received and concern expressed by State officials regarding the Department's making program management and funds allocation decisions on the basis of priority enrollment data collected semiannually, the provision to collect priority data on a quarterly basis is retained. The Department believes this will capture any seasonal variations in

birthrates and the presence of migrants within a State.

September 30, 1988 Implementation Date

Only a small portion (6 percent) of the comments received addressed the proposed September 30, 1988 implementation date for the reporting revisions. Eleven commentors discussed the issue; five supported and six opposed. Cost and complexity were major factors cited by the opposing commentors. They expressed concern that when the implementation timetable for the reporting revision was developed, the current ADP data systems of the majority of State agencies were not considered. As such, implementation of the reporting revisions for some State agencies may prove to be far more complex and costly than FNS envisioned. As a result, these State agencies may have difficulty in completing necessary ADP systems modifications in time to meet the September 30, 1988 deadline. In fact, one State suggested another implementation date of March 1989 at which time it anticipates having its systems capability in place.

Three of the six opposing commentors requested that the Department provide State agencies more flexibility on the implementation date in the event that State agency systems for collecting the data are not fully operational at that time.

The five commentors supporting the September 30, 1988 implementation date believed the Department provided State agencies adequate time to complete their transitions to the revised reporting requirement. Indeed, State agencies were advised of plans regarding the need for improved reporting in December 1986. Final recommendations for improving program reporting were presented to State agencies in March 1987. The point was made that any further delay in the implementation of the reporting revision would only prolong the use of data in the funds allocation process which does not meet the standard of accuracy, timeliness and comparability most desirable for funds allocation purposes.

The September 30, 1988 implementation date has been retained. The Department believes it is imperative that we have a uniform and valid data base for WIC Program reporting. This is particularly significant in light of the new funding formulas, the results of which will reflect the quality of program reporting data. Consequently, those results will not be fully equitable

without improving the quality of this data. The perception that currently available data is not sufficiently accurate or uniform to use in a funding formula imparts an element of urgency to this effort.

Completing these reporting revisions by September 30, 1988 will enhance overall program management and accountability without further delay. The Department has considered the short-term inconvenience to some State agencies but finds it outweighed by the long-term benefit to all State agencies.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 341-353, Pub. L. 99-500 and 99-591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); Sec. 3, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786); Sec. 203, Pub. L. 96-499, 94 Stat. 2599; Sec. 815, Pub. L. 97-35, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.25, paragraph (b)(2) is revised to read as follows:

§ 246.25 Record and reports.

* * * * *

(b) * * *

(2) *Quarterly reports.* Quarterly, on dates specified by FNS, State agencies shall report the number of persons participating in the Program by category (i.e., pregnant, breastfeeding, and postpartum women, infants and children) within each priority level as established in § 246.7(d)(4).

* * * * *

§ 246.28 [Amended]

3. In § 246.28, the table is amended by adding to the last entry, second column, the OMB Control No. "0584-0347".

Dated: April 26, 1988.

Thomas W. Mitchell,
Acting Administrator.

[FR Doc. 88-9616 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-060]

Varroa Mite; Change to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the quarantined areas established in the "Varroa Mite" interim rule by reducing the quarantined areas to include only specified parts of two states, Mississippi and Washington, rather than the entire states. We are taking this action to ensure that the quarantined areas include only the portion of each of these states that must be quarantined to contain the interstate spread of Varroa mite infestation. We also are making several changes to clarify and correct provisions of the "Varroa mite" interim rule.

DATES: Interim rule effective April 27, 1988. Consideration will be given only to comments postmarked or received on or before July 5, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket No. 88-060. The public may review comments received on this and other dockets in Room 1141 of the South Building, 14th Street at Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees in the colonies they infest and reducing their ability to pollinate plants and produce honey. Varroa mites can multiply quickly without attracting a beekeeper's attention until serious damage has been done.

Until September 1987, the Varroa mite had not been found in the United States. Since then, when the first Varroa mite infestation was reported in Wisconsin, Varroa mite infestations have been confirmed in 12 additional states: Florida, Illinois, Maine, Michigan,

Mississippi, Nebraska, New York, Ohio, Pennsylvania, South Carolina, South Dakota, and Washington.

The current Varroa mite infestations will, if not controlled, cause serious economic losses throughout the agricultural sector. If the honeybee population were devastated by Varroa mites, every U.S. crop dependent upon honeybees for pollination would be affected. Honey production, too, would drop substantially.

Therefore, in an interim rule effective on April 6 and published in the **Federal Register** on April 11, 1988 (53 FR 11825-11830, Docket No. 87-140), we established "Subpart—Varroa Mite" (§§ 301.92 through 301.92-10, referred to below as the regulations) in 7 CFR Part 301. These regulations quarantine the 13 states in which Varroa mite infestations have been found and restrict the interstate movement of regulated articles from quarantined areas.

We are reducing the quarantined areas in § 301.92-3(c) to include less than the entire state of Mississippi and less than the entire state of Washington. Specifically, parts of Adams, Franklin, and Wilkinson Counties, Mississippi, and part of Klickitat County, Washington, are included in the quarantined areas. Section 301.92-3(a) of the regulations provides that the Administrator of the Animal and Plant Health Inspection Service will list as a quarantined area each Varroa mite-infested apiary and a specified area surrounding it, rather than the entire state in which an infestation exists, upon determining that: (1) The state has adopted and is enforcing restrictions on intrastate movement of regulated articles that are equivalent to the restrictions, in the regulations, on interstate movement of regulated articles, and (2) the quarantining of less than an entire state will prevent the interstate spread of the Varroa mite.

The Administrator has determined that Mississippi and Washington have adopted and are enforcing restrictions on intrastate movement of regulated articles that are equivalent to the restrictions, in the regulations, on interstate movement of regulated articles. He also has determined that maintaining the quarantine in the portion of each of these two states that includes all the apiaries in which Varroa mite infestations are known to exist and approximately 100 square miles surrounding each of these apiaries will contain the interstate spread of Varroa mite infestation from Mississippi or Washington. These determinations are based on results of federal and state Varroa mite surveys in Mississippi and Washington and communications with

these states. Therefore, in § 301.92-3(c) we are substituting certain parts of Adams, Franklin, and Wilkinson Counties for the entire state of Mississippi, and are substituting certain parts of Klickitat County for the entire state of Washington.

We are also making several changes to clarify and correct the regulations. These include the addition of a definition of "interstate" and the deletion of an incorrect reference to "a complier" in the definition of "limited permit" in § 301.92-1 and minor editorial changes.

Interim Rule

The Administrator of the Animal and Plant Health Inspection Service determined that an emergency situation existed and, therefore, quarantined the states of Mississippi and Washington, without prior notice and opportunity for public comment, based on the presence of Varroa mites in some beehives (i.e., infestations) in those states, in order to prevent the interstate spread of Varroa mite to states of the United States which were not infested. Recent surveys and communications have established that (1) in Mississippi, all Varroa mite-infested apiaries along with the surrounding approximately 100 square miles are in a portion of Mississippi which includes parts of three counties and (2) in Washington, all Varroa mite-infested apiaries along with the surrounding approximately 100 square miles are in a portion of one county. The Administrator has determined that Mississippi and Washington are imposing restrictions on intrastate movement, so that the Varroa mite will not spread to other parts of these states. Maintaining a quarantine in other parts of Mississippi and Washington results in an unnecessary burden on APHIS's limited resources. As indicated below, the quarantined status of the portions of these states in which Varroa mites are not present also imposes unnecessary costs on commercial beekeepers. Moreover, issuing a proposal to remove those portions of Mississippi and Washington from the quarantined areas would delay final action until well past spring, the period of maximum interstate movement of honeybees and other regulated articles from and to Mississippi and Washington.

For these reasons and because this rule relieves a regulatory restriction, we find that giving advance notice and public procedure is impracticable, contrary to the public interest, and unnecessary. Therefore, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature.

We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This amendment affects the interstate movement of regulated articles from all portions of Mississippi and Washington other than certain parts of Adams, Franklin, and Wilkinson Counties, Mississippi, and Klickitat County, Washington. There are 68 commercial beekeepers in Mississippi, all of which are small entities. Three beekeepers with a total of 1,680 beehives are located in the portion of Mississippi that continues to be subject to the restrictions established on April 6, 1988. The estimated cost of compliance with the regulations to move hives interstates from a quarantined area is \$4.00 per hive or, potentially \$6,720 for the hives which remain in the quarantined area. This rule makes the regulations inapplicable to interstate movements of regulated articles by 65 beekeepers maintaining an estimated 111,530 hives in other parts of Mississippi, for a potential savings of approximately \$446,120. There are approximately 600 commercial beekeepers in Washington, all of which are small entities. Two beekeepers with a total of 2,000 beehives are located in the portion of Washington that continues to be subject to the restrictions established on April 6, 1988. The estimated cost of compliance with the regulations to move hives interstate from a quarantined area is \$4.00 per hive or, potentially, \$8,000. This rule makes

the regulations inapplicable to interstate movements of regulated articles by approximately 598 beekeepers maintaining an estimated 148,000 hives in other parts of Washington, for a potential savings of approximately \$592,000.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Honeybees, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Varroa mite.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164-167, and 2260; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.92-1 is amended by removing "or complier" after "in which an inspector" in the definition of "limited permit" and by adding, in alphabetical order, a definition of "interstate" to read as follows:

§ 301.92-1 Definitions.

* * * * *

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

* * * * *

§§ 301.92-7 and 301.92-10 [Amended]

3. The third and fourth sentences of § 301.92-7(a) and § 301.92-10(b) are corrected by changing "honey bees" to "honeybees" each time "honey bees" appears and § 301.92-10(a) is corrected by changing "honey bee" to "honeybee".

§ 301.92-5 [Amended]

4. In § 301.92-5, footnote 2 to paragraphs (a) and (b) is amended by adding "of this subpart" at the end before the period and paragraphs (c)(1) and (d)(1) are amended by replacing "his/her" with "the complier's".

5. Paragraph (c) of § 301.92-3 is revised to read as follows:

§ 301.92-3 Quarantined areas.

* * * * *

(c) The following are quarantined areas:

Florida

The entire state.

Illinois

The entire state.

Maine

The entire state.

Michigan

The entire state.

Mississippi

Adams County. Sections 1, 2, 11, 12, 15, 23, 24, 25, and 27 within T.5 N., R.2 W., and all Sections within T.5 N., R.1 W..

Franklin County. Sections 8, 9, 10, 11, 12, 13, 14, 15, 27, 29, 30, 41, 42, 43, and 45 within T.5 N., R.1 E., and Sections 7, 8, and 44 within T.4 N., R.1 E..

Wilkinson County. Sections 1, 2, 15, 16, 17, 18, 30, 31, 32, 33, 45, 46, 48, and 49 within T.4 N., R.2 W., all Sections within T.4 N., R.1 W., Sections 26, 36, and 37 within T.5 N., R.2 W., all Sections within T.5 N., R.1 W., and Sections 9, 10, 11, 23, 24, 25, 26, 35, 36, 37, 38, and 43 within T.4 N., R.1 E..

The entire state.

Nebraska

The entire state.

New York

The entire state.

Ohio

The entire state.

Pennsylvania

The entire state.

South Carolina

The entire state.

South Dakota

The entire state.

Washington

Klickitat County. That portion of the county bounded by State Highway 97 on the west, by Goldendale-Goodnoe Road on the north, by Goodnoe Station Road on the east, and by the Columbia River on the south.

Wisconsin

The entire state.

Done in Washington, DC, this 27th day of April, 1988.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 88-9721 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 354

[Docket No. 88-059]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances in Maryland and New Jersey. A commuted traveltime allowance is the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT:
Paul Eggert, Director, National
Administrative and Planning Operations
Staff, PPQ, APHIS, USDA, Room 614,
Federal Building, 6505 Belcrest Road,
Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a

PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances between certain locations in Maryland and New Jersey. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that

prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

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 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

COMMUTED TRAVELTIME ALLOWANCES

[In hours]				
Location covered	Served from—	Metropolitan area		
		Within	Outside	
Add:				
*	*	*	*	
MARYLAND				
*	*	*	*	
Andrews AFB, Baltimore	Baltimore			3½
Baltimore	Andrews AFB,			3½
Piney Point	Baltimore			5
Piney Point	Beltsville			4
*	*	*	*	
NEW JERSEY				
*	*	*	*	
Atlantic City	McGuire AFB,			3
*	*	*	*	

Done in Washington, DC, this 27th day of April, 1988.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 88-9723 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and
Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the regulations governing the Conservation and Environmental Programs found at 7 CFR Part 701, to change the definition of an eligible "State" to allow producers in Guam and the Commonwealth of the Northern Mariana Islands (CNMI) to participate in the Agricultural Conservation Program (ACP) and the Emergency Conservation Program (ECP). This change would allow certain producers in Guam and the CNMI to be eligible for cost-share assistance under the ACP and ECP.

EFFECTIVE DATE: May 3, 1988.

ADDRESS: Interested persons are invited to submit written comments to: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-447-6221.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-447-6221.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 701) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0112.

This final rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic

regions; and (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Agricultural Conservation Program (ACP), Number—10.063; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The ACP is authorized generally by sections 7-17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590g *et seq.*) The program provides financial incentives and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, or prevent increased cost of production.

The ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*). This program is designed to provide cost-share assistance for emergency work to meet only the critical needs of agricultural producers due to drought or other natural disaster.

Requests have been received from representatives of producers in Guam and the Commonwealth of the Northern Mariana Islands (CNMI) for the implementation of the ACP and the ECP in such areas. The Soil Conservation Service has a staff of 7 employees available in Guam to provide technical assistance to producers in the area. Guam and the CNMI have formed Soil

and Water Conservation Districts to service the producers in the area.

The Secretary of Agriculture is authorized to extend, in his discretion, programs administered by the Department of Agriculture to Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands, and American Samoa (hereinafter called the "territories"). (48 U.S.C. 1469d(c).) Under existing regulations the authority for producers to participate in ACP and ECP has not been extended to Guam or the CNMI.

Guam and the CNMI are small islands with limited natural resources. In addition, the financial resources of the people living there are very limited. The availability of the ACP to these people will help to control and prevent the erosion of valuable natural resources. The availability of the ECP will assist them in times of natural disaster to rehabilitate the land back to a productive state. These two programs will help the people put valuable conservation measures on the land.

The Secretary has determined that the ACP and the ECP should be extended to Guam and the CNMI and has notified the appropriate committees of Congress of his decision. In order that these programs may be made available to producers in Guam and the CNMI as soon as possible, it has been determined that the provisions of this regulation shall become effective upon date of publication in the Federal Register.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs, Natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons set forth in the preamble, 7 CFR Part 701 is amended as follows:

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

1. The authority citation for Part 701 is revised to read as follows:

Authority: 16 U.S.C. 590d, 590g-590o, 590p(a), 590q; 16 U.S.C. 1501-1510; 16 U.S.C. 1606, 2101-2111; 16 U.S.C. 2201-2205; 48 U.S.C. 1469d(c).

2. Section 701.2(e) is revised to read as follows:

§ 701.2 Definitions.

(e) "State" means any one of the United States, Puerto Rico, the Virgin Islands, and (1) In the case of the Agricultural Conservation Program and the Emergency Conservation Program,

Guam and the Commonwealth of the Northern Mariana Islands; and (2) In the case of the Forestry Incentives Program, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

Signed at Washington, DC on April 27, 1988.

Vern Neppi,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-9718 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 900

Changes in Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders and Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Rules of Practice and Procedure concerning the execution of marketing agreements so that the notice of issuance and effective date provisions conform to those which are currently in effect for marketing orders. The amendments are necessary so that marketing agreements may be published in the Code of Federal Regulations (CFR). This rule also makes minor changes in information collection regulations which will be necessary when the peanut agreement is codified.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone, (202) 475-5697.

SUPPLEMENTARY INFORMATION: This action amends § 900.14(a) of Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders (7 CFR 900.1-900.18), and § 900.601 of Subpart—Information Collection (7 CFR 900.600-900.601).

This action is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has

been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities because it involves only Department of Agriculture procedures and would not measurably affect costs for the directly regulated persons.

A marketing agreement is issued in conjunction with a marketing order or independently when handlers of a required percent of the commodity covered have signed an agreement with the Secretary of Agriculture. However, the Secretary can issue a marketing order independently if the order has received the required grower approval (generally, two-thirds of the growers who voted either by number or volume), and the Secretary finds that it is the only practical way of advancing growers' interests.

A marketing order, with or without handler approval, is binding on all handlers in the industry. A marketing agreement without a companion marketing order is binding only on those handlers who sign it.

The commodities which may be regulated through marketing orders and the ways in which they may be regulated are prescribed in the Act. No statutory limitations of these types are prescribed for marketing agreements.

Marketing agreement and order programs are based on evidence presented at a public hearing. At the hearing, the proponents present evidence in support of the program, and opponents submit evidence in support of their positions. Any order or agreement issued must be supported by substantial and reliable evidence contained in the record. The record must contain an explanation of how the program will fit the particular conditions of the industry and how it will solve the industry's marketing problems.

Section 900.14(a) concerning marketing agreements provides that if the Secretary determines that the required number of handlers execute a marketing agreement, the Secretary shall execute the marketing agreement, and notice of its effective date shall be mailed by the hearing clerk to each person who is a signatory to that agreement. That paragraph further provides that a marketing agreement shall be effective and binding upon any party thereto even though such party may not have received the notice provided for in paragraph (a), or the

hearing clerk may have failed to mail such notice.

The rules concerning marketing orders (with or without agreements) provide for publication in the Federal Register and contain different provisions with respect to notice and effective dates.

In order to codify and publish agreements in the CFR, the procedures in § 900.14(a) need to be brought into conformity with those contained in §§ 900.14 (d) and (e). The changes hereinafter set forth in § 900.14(a) bring the procedural requirements for marketing agreements without orders into conformity with those for orders with or without agreements.

This rule also makes conforming changes in § 900.601 of Subpart—Information Collection (7 CFR 900.600 and 900.601) which will be needed when the Marketing Agreement Regulating the Quality of Domestically Produced Peanuts (peanut agreement) is codified. Section 900.601 lists the Office of Management and Budget (OMB) control numbers assigned by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and the 7 CFR part numbers for various fruit, vegetable, and specialty crop commodities for which there are codified marketing orders with or without agreements. The control numbers provide a simple and effective way for the public to determine if an information collection burden has been approved by OMB. The information collection requirements of the peanut agreement have been approved by OMB. The OMB control number assigned to the peanut agreements is 0581-0067 and is added to § 900.601(b) by this action. Also, the part number "7 CFR Part 998," to be assigned to the peanut agreement, is added to § 900.601(a) by this action.

Pursuant to 5 U.S.C. 553, it is found that this action is exempt from the requirement to give preliminary notice and to engage in public rulemaking procedure in that: (1) This action is administrative only and prescribes agency practices and procedures for implementing executed marketing agreements without marketing orders and (2) this action merely displays the information collection control number assigned by the OMB for the peanut agreement in anticipation of its codification as 7 CFR Part 998. Good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register for the reasons stated above.

List of Subjects in 7 CFR Part 900

Marketing agreements and orders, Almonds, Apricots, Avocados, Celery, Cherries, Cranberries, Dates, Filberts,

Grapefruit, Grapes, Hazelnuts, Kiwifruit, Lemons, Lettuce, Limes, Melons, Nectarines, Olives, Onions, Oranges, Papayas, Peaches, Pears, Plums, Potatoes, Prunes, Raisins, Spearmint oil, Tangelos, Tangerines, Tomatoes, Walnuts, Peanuts.

For the reasons set forth in the preamble, §§ 900.14 and 900.601 are amended as follows:

PART 900—GENERAL REGULATIONS

1. The authority citation for Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Orders (7 CFR 900.1–900.18) continues to read as follows:

Authority: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

2. Section 900.14 is amended by revising the section heading and paragraph (a) to read as follows:

§ 900.14 Execution and issuance of marketing agreements and marketing orders.

(a) *Execution and issuance of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem sufficient shall have executed the agreement, the Secretary shall execute the agreement. After execution of a marketing agreement, such agreement shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the *Federal Register*. The marketing agreement shall not become effective less than 30 days after its publication in the *Federal Register*, unless the Secretary, upon good cause found and published with the agreement, fixes an earlier effective date therefor: *Provided*, That no marketing agreement shall become effective as to any person signatory thereto before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice that the Secretary has executed the agreement and the effective date of the marketing agreement.

3. The authority citation for Subpart—Information Collection (7 CFR 900.600–900.601) continues to read as follows:

Authority: 44 U.S.C. Ch. 35.

4. Section 900.601 is amended by changing "993" to "998" in paragraph (a), and adding an OMB Control Number

for domestically produced peanuts to read as follows:

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

998, Domestic Peanuts.....0581–0067

Dated: April 25, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–9526 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

8 CFR Part 3

[A.G. Order 1270–88]

Executive Office for Immigration Review; Board of Immigration Appeals; Designation of Judges

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule provides for the designation of immigration judges as temporary, additional members to supplement the regular Board of Immigration Appeals.

This provision is necessary because it has become apparent that periodic substantial increases in the Board case load have created a need for additional members to assist in the efficient review of cases. This rule will effectively increase the Board's capacity to review cases since it will be possible to create two panels of three members, each one capable of reviewing cases. Also, in the event of Board vacancies, this provision will permit the temporary utilization of immigration judges to assist in the review of cases.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT:

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6470.

SUPPLEMENTARY INFORMATION: This final rule provides for temporary, additional Board members to be designated by the Director of the Executive Office for Immigration Review, from among immigration judges.

This provision is necessary because it has become apparent that periodic substantial increases in the Board case load have created a need for additional members to assist in the efficient review of cases. This rule will effectively increase the Board's capacity to review

cases since it will be possible to create two panels of three members, each one capable of reviewing cases. Also, in the event of Board vacancies, this provision will permit the temporary utilization of immigration judges to assist in the review of cases.

This rule is also promulgated as a contingency for national emergencies. If ever there is a situation where for national security considerations or other critical reasons, large numbers of cases must be reviewed quickly, this rule will assist in the speedy review of such matters.

Finally, this rule will provide a cost-effective method of increasing Board productivity. Since immigration judges may be designated as temporary, additional Board members during peak periods on an as needed basis, substantial cost savings will be realized when compared to the creation of additional, permanent Board members.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Further, this rule is not a major rule within the definition of section 1(b) of Executive Order 12291.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Aliens.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart A—Board of Immigration Appeals

1. The authority citation for Part 3 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301, Section 2 Reorg. Plan No. 2 of 1950.

2. Section 3.1, paragraph (a)(1) is revised to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall exercise so much of the immigration and nationality laws as he may delegate to it. The Board shall consist of a Chairman and four

other members. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board, and three members of the Board shall constitute a quorum of the Board. The Director may in his discretion designate immigration judges to act as temporary, additional Board members for whatever time the Director deems necessary. In the event that immigration judges are so designated, two panels of three members each may be designated by the Chairman. Each panel shall be empowered to review cases by majority vote. Each panel may exercise the appropriate authority of the Board as set out in Part 3 which is necessary to review cases before it. The permanent Board may, by majority vote on its own motion, reconsider en banc any case decided by a panel. The total number of Board members and temporary, additional Board members may not exceed seven individuals at any time. There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

Date: April 21, 1988.

Edwin Meese III,
Attorney General.

[FR Doc. 88-9740 Filed 5-2-88; 8:45 am]

BILLING CODE 1531-26-M

DEPARTMENT OF ENERGY

10 CFR Part 1004

Freedom of Information; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This final rule revises the DOE regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552. Revisions include a new schedule of fees associated with processing of FOIA requests, guidelines that implement the fee schedule, and current addresses of Department organizational entities.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT:

John H. Carter, Chief of Freedom of Information and Privacy Acts, MA-232.1, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955
Abel Lopez, Office of General Counsel, GC-43, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8618

SUPPLEMENTARY INFORMATION: This final rule conforms to the guidelines issued by the Office of Management and Budget (OMB), as required by the Freedom of Information Reform Act of 1986 (FOIRA), Pub. L. No. 99-570, 100 Stat. 3207-49. In addition, there are many editorial revisions and changes to the existing DOE rule on FOIA which are incorporated in this final rule.

General Information

The Freedom of Information Reform Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-49, requires that each agency (1) promulgate regulations which establish a fee schedule to process requests for information and (2) establish procedures and guidelines to determine when such fees should be waived or reduced. The DOE fee schedule and procedures conform to the guidelines issued by the OMB for agencies to follow in implementing these regulations. This final rule revises existing DOE fee schedules and procedures in accordance with the FOIA, as amended, and makes other technical and editorial changes to the DOE regulations that implement the FOIA. The DOE published its proposed rule for comment on June 17, 1987 (52 FR 23155).

Executive Order No. 12291

It has been determined that these regulations are not a major rule subject to the requirements of Executive Order No. 12291 (46 FR 13193, February 19, 1981), because they are not 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 cause significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These regulations were submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

Analysis of Comments Received

Comments postmarked or received within the comment period were considered in the development of this final rule. In response to a suggestion by three commenters, the DOE will again include the language of the FOIA exemptions in the rule. Additional comments are addressed below

according to the subsections of the regulation to which they apply.

1. *Definitions (Section 1004.2).* Three commenters objected to certain definitions contained in this section, especially that of "representative of the news media." However, these definitions were drawn from the OMB Fee Guidelines, that became final after a period of public notice and comment in which concerns similar to those raised by these commenters were considered. See OMB Fee Guidelines, sec. 6g-6j, 52 FR 10011, 10017-18 (March 27, 1987); see also 52 FR 10013-15 (OMB analysis of comments on definitions). The DOE is required by the FOIA to conform its fee schedule, which includes these definitions of categories of requesters, to the OMB Fee Guidelines. Furthermore, the DOE firmly believes that these definitions, including that of "representative of the news media," properly implement the statutory intent of the amended Act.

2. *Fees to be charged (Section 1004.9(a)).* One commenter objected to the use of private sector firms to locate, reproduce and disseminate records in response to FOIA requests, because these private firms might have access to trade secrets and confidential commercial information. However, this provision was taken directly from the OMB Fee Guidelines. See OMB Fee Guidelines, sec. 7, 52 FR 10011, 10018 (March 27, 1987). The DOE believes that this correctly implements the statutory provision concerning making records promptly available.

3. *Review of records (Section 1004.9(a)(3)).* One commenter objected to the provision for charging review costs for a subsequent review of records previously withheld pursuant to an exemption determined to no longer apply. The DOE believes that such review qualifies under the statute as an "initial examination" because the record is being reviewed for the first time to determine whether other exemptions which had not been previously considered now apply. If these review costs were precluded, the DOE would be compelled at the time of initial processing to review these records to determine the applicability of all possible exemptions, even though at the time of processing one exemption may clearly apply to the entire record or portions thereof. Such an approach would unnecessarily increase review costs to requesters.

4. *Notification of charges (Section 1004.9(a)(7)).* One commenter stated that it is unclear whether a requester must agree to pay all fees for charges over \$25.00 before the time deadlines for a

response to his request will begin to run. A sentence has been added to this section of the final rule to address this concern and to clarify that under these circumstances, a request is deemed to have been received when the requester has provided an assurance to pay the total anticipated fee. Such an assurance ensures that government expenses are not inappropriately incurred and a recovery of cost can be made.

5. *Waiving or reducing fees (Section 1004.9(a)(8)).* Three commenters expressed concern that the factors to be considered for fee waivers and fee reductions require the DOE to make speculative and subjective value judgments regarding the subject of a request and its value to the public. These factors set forth by the DOE, are taken directly from the statute. The six criteria enumerated in the regulation are provided as specific elements to be considered that shall be known to all requesters. The DOE will make every effort to apply the criteria in an objective manner.

Contrary to the suggestion of two of the commenters, the requirement that information be submitted in support of a fee waiver request is not affected by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The Office of Information and Regulatory Affairs of the OMB, which has responsibility for the implementation of the Paperwork Reduction Act, has determined that FOIA fee regulation requirements that requesters submit information in support of their fee waiver and fee limitation claims are not "information collection requests" within the meaning of that Act. See also 5 CFR 1320.7(c) (1987).

One commenter also urged that the DOE establish certain categories of requesters or types of requests which would be presumptively entitled to a fee waiver. The DOE believes that each request for a fee waiver must be evaluated on its own merit and that the provisions of § 1004.9(a)(8) accurately reflect the appropriate considerations guiding agency fee waiver determinations. The fee waiver provision of the FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), does not provide for any such presumptions for categories of requesters, although the limitations on duplication, search, and review fees under subsection (a)(4)(A)(ii) of the Act do distinguish among categories of requesters. The fee waiver provision in subsection (a)(4)(A)(iii), therefore, must be applied on a case-by-case basis for all requesters.

6. *Charges for unsuccessful search (Section 1004.9(b)(6)).* One commenter objected to the provision for charging requesters for unsuccessful searches,

asserting that this might intimidate potential requesters. The statute, however, does not restrict recovery of search costs to those instances where documents are located. See 5 U.S.C. 552(a)(4)(A)(ii). Since costs will be incurred by the DOE regardless of whether a search results in the discovery of responsive records, the DOE believes that the requester should incur this expense and not the general public.

7. *Aggregating requests (Section 1004.9(b)(7)).* One commenter questioned the language of this section stating that it is unclear that the DOE will apply a reasonable standard to determine whether a request is being broken down to evade fees. The word "reasonably" has been added to the language for clarification.

The commenter also suggested that DOE include in the final rule the statement that in no case will DOE aggregate multiple requests on unrelated subjects from one requester. This comment has been adopted and the rule has been revised accordingly.

8. *Advance payments (Section 1004.9(b)(8)).* Two commenters objected to the suspension of the statutory time limits for responding to a request while an advance payment is being sought. However, this provision ensures that the agency recoup appropriate costs incurred to provide a requester the documents sought. Moreover, this provision is consistent with the OMB Fee Guidelines. See OMB Fee Guidelines, sec. 9d, 52 FR 10011, 10020 (March 27, 1987).

The DOE believes that this provision correctly implements the statutory provision concerning advance payments.

9. *Handling information of a private business, foreign government, or an international organization (Section 1004.11).* One commenter stated that "the regulations should make clear that the provisions for consulting with businesses and others may not be exercised in a manner that will interfere with the agency's obligation to grant or deny information within 10 days." As written, the DOE regulations have no adverse impact on the Department's responsibility to determine within 10 days after the receipt of a request whether to comply with the request. This determination may precede and is independent of any consultation with submitters of information covered by this section.

Additionally, one commenter suggested the addition of some safeguards for handling information covered by this section. As written, this section is no different than that which

existed previously in the FOIA regulations of the Department, and the DOE has determined that adequate safeguards were contained therein.

List of Subjects in 10 CFR Part 1004

Freedom of information.

Harry L. Peebles,

Director of Administration.

For the reasons set forth in the preamble, 10 CFR Part 1004 is revised as follows:

PART 1004—FREEDOM OF INFORMATION

Sec.

- 1004.1 Purpose and scope.
- 1004.2 Definitions.
- 1004.3 Public reading facilities.
- 1004.4 Elements of a request.
- 1004.5 Processing requests for records.
- 1004.6 Requests for classified records.
- 1004.7 Responses by authorizing officials: Form and content.
- 1004.8 Appeals of initial denials.
- 1004.9 Fees for providing records.
- 1004.10 Exemptions.
- 1004.11 Handling information of a private business, foreign government, or an international organization.
- 1004.12 Computation of time.

Authority: 5 U.S.C. 552.

§ 1004.1 Purpose and scope.

This part contains the regulations of the Department of Energy (DOE) that implement 5 U.S.C. 552, Pub. L. 89-487, as amended by Pub. L. 93-502, 88 Stat. 1561, by Pub. L. 94-409, 90 Stat. 1241, and by Pub. L. 99-570, 100 Stat. 3207-49. The regulations of this part provide information concerning the procedures by which records may be requested from all DOE offices, excluding the Federal Energy Regulatory Commission (FERC). Records of the DOE made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this part. Persons seeking information or records of the DOE may find it helpful to consult with a DOE Freedom of Information Officer before invoking the formal procedures set out below. To the extent permitted by other laws, the DOE will make records available which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

§ 1004.2 Definitions.

As used in this part:

- (a) "Appeal Authority" means the Office of Hearings and Appeals.
- (b) "Authorizing or Denying Official" means that DOE officer as identified by the Directorate of Administration by separate directive, having custody of or

responsibility for records requested under 5 U.S.C. 552. In DOE Headquarters, the term refers to The Freedom of Information Officer as defined below and officials who report directly to either the Office of the Secretary or a Secretarial Officer as also defined below. In the Field Offices, the term refers to the head of a field location identified in § 1004.2(h) and the heads of field offices to which they provide administrative support and have delegated this authority.

(c) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine how the requester will use the documents requested. Moreover, where DOE has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not evident from the request itself, the DOE will seek additional clarification before assigning the request to a specific category.

(d) "Department" or "Department of Energy (DOE)" means all organizational entities which are a part of the executive department created by Title II of the DOE Organization Act, Pub L. 95-91. This specifically excludes the FERC.

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

(f) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of, but are not limited to, paper copy, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk). The copy provided must be in a form that can be reasonably used by requesters.

(g) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of

vocational education, which operates a program or programs of scholarly research.

(h) "Freedom of Information Officer" means the person designated to administer the Freedom of Information Act at the following DOE offices:

(1) Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802-0050.

(2) Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115.

(3) Bartlesville Project Office, P.O. Box 1398, Bartlesville, OK 74005.

(4) Bonneville Power Administration, P.O. Box 3621-AL, Portland, OR 97208-3621.

(5) Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439.

(6) Headquarters, Department of Energy, Washington, DC 20585.

(7) Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402.

(8) Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507.

(9) Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193-8518.

(10) Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37831.

(11) Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236-0940.

(12) Richland Operations Office, P.O. Box 550, Richland, WA 99352.

(13) San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

(14) Savannah River Operations Office, P.O. Box A, Aiken, SC 29802.

(15) Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30635.

(16) Southwestern Power Administration, ATTN: SWPA-120, P.O. Box 1619, Tulsa, OK 74101.

(17) Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

(18) Western Area Power Administration, P.O. Box 3402, Golden, CO 80401.

(i) "General Counsel" means the General Counsel provided for in section 202(b) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on Freedom of Information Act matters.

(j) "Headquarters" means all DOE facilities functioning within the Washington metropolitan area.

(k) "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in § 1004.2(c), and which is operated solely for the purpose of conducting scientific

research, the results of which are not intended to promote any particular product or industry.

(l) "Office" means any administrative or operating unit of the DOE, including those in field offices.

(m) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive.

Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

(n) "Review" refers to the process of examining documents located in response to a commercial use request (see § 1004.2(c)) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(o) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The DOE will search for material in the most efficient and least expensive manner in order to minimize cost for both DOE and the requester. For example, DOE will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material in order to determine whether the material

is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(p) "Secretarial Officer" means the General Counsel; Assistant Secretary, Management and Administration; Assistant Secretary for Congressional, Intergovernmental, and Public Affairs; Assistant Secretary for International Affairs and Energy Emergencies; Assistant Secretary for Nuclear Energy; Assistant Secretary for Fossil Energy; Assistant Secretary, Conservation and Renewable Energy; Assistant Secretary for Defense Programs; Assistant Secretary for Environment, Safety, and Health; Administrator, Economic Regulatory Administration; Administrator, Energy Information Administration; Director of Energy Research; Director of Civilian Radioactive Waste Management; Director of Minority Economic Impact, and the Inspector General.

(q) "Statute specifically providing for setting the level of fees for particular types of records," at 5 U.S.C. 552(a)(4)(A)(vi), means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

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

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

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

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

§ 1004.3 Public reading facilities.

(a) The DOE Headquarters will maintain, in the public reading facilities, the materials which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying. The principal public reading facility will be located at the Freedom of Information Office, 1000 Independence Avenue, SW, Washington, DC. A complete listing of other facilities is available from the Freedom of Information Officer at DOE Headquarters.

(b) Each of the designated field offices will maintain in public reading facilities certain materials maintained in the

Headquarters facility and other materials associated with the particular field offices.

(c) Each of these public reading facilities will maintain and make available for public inspection and copying current indices of the materials at that facility which are required to be indexed by 5 U.S.C. 552(a)(2) or other applicable statutes.

§ 1004.4 Elements of a request.

(a) *Addressed to the Freedom of Information Officer.* A request for a record of the DOE which is not available in a public reading facility, as described in § 1004.3, shall be addressed to the appropriate Headquarters or field Freedom of Information Officer, Department of Energy, at a location listed in § 1004.2(h) of this part, and both the envelope and the letter shall be clearly marked "Freedom of Information Request." Except as provided in § 1004.4(e), a request will be considered to be received by the DOE for purposes of 5 U.S.C. 552(a)(6) upon actual receipt by the Freedom of Information Officer. Requests delivered after regular business hours of the Freedom of Information Office are considered received on the next regular business day.

(b) *Request must be in writing and for reasonably described records.* A request for access to records must be submitted in writing and must reasonably describe the records requested to enable DOE personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any DOE officers or employees who have been contacted regarding the request prior to the submission of a written request. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents. If the records are known to be in a particular office of the DOE, the request should identify that office.

(c) *Categorical requests.* (1) Must meet reasonably described records requirement. A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described if DOE personnel can reasonably determine which particular records are sought in the request. The request must enable the DOE to identify an locate the records sought by a process that is not unreasonably

burdensome or disruptive of DOE operations. The Freedom of Information Officer may take into consideration problems of search which are associated with the files of an individual office within the Department and determine that a request is not one for reasonably described documents as it pertains to that office.

(2) Assistance in reformulating a non-conforming request. If a request does not reasonably describe the records sought, as specified in paragraph (c)(1) of this section, the DOE response will specify the reasons why the request failed to meet the requirements of paragraph (c)(1) of this section and will invite the requester to confer with knowledgeable DOE personnel in an attempt to restate the request or reduce the request to manageable proportions by reformulation or by agreeing on an orderly procedure for the production of the records. If DOE responds that additional information is needed from the requester to render records reasonably described, any reformulated request submitted by the requester will be treated as an initial request for purposes of calculating the time for DOE response.

(d) *Nonexistent records.* (1) 5 U.S.C. 552 does not require the compilation or creation of a record for the purpose of satisfying a request for records.

(2) 5 U.S.C. 552 does not require the DOE to honor a request for a record not yet in existence, even where such a document may be expected to come into existence at a later time.

(3) If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist, the requester will be so notified.

(e) *Assurance of willingness to pay fees.* A request shall include (1) an assurance to pay whatever fees will be assessed in accordance with § 1004.9, (2) an assurance to pay those fees not exceeding some specified dollar amount, or (3) a request for a waiver or reduction of fees. No request will be deemed to have been received until the DOE has received some valid assurance of willingness to bear fees anticipated to be associated with the processing of the request or a specific request of a waiver or reduction of fees.

(f) *Requests for records or information of other agencies.* Some of the records in the files of the DOE have been obtained from other Federal agencies or contain information obtained from other Federal agencies.

(1) Where a document originated in another Federal agency, the Authorizing Official will refer the request to the

originating agency and so inform the requester, unless the originator agrees to direct release by DOE.

(2) Requests for DOE records containing information received from another agency, or records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that the Authorizing Official will coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, will cite the other agency Denying Official as well as the appropriate DOE Denying Official if a denial by DOE is also involved.

§ 1004.5 Processing requests for records.

(a) Freedom of Information Officers will be responsible for processing requests for records submitted pursuant to this part. Upon receiving such a request, the Freedom of Information Officer will, except as provided in paragraph (c) of this section, ascertain which Authorizing Official has responsibility for, custody of, or concern with the records requested. The Freedom of Information Officer will review the request, consulting with the Authorizing Official where appropriate, to determine its compliance with § 1004.4. Where a request complies with § 1004.4, the Freedom of Information Officer will acknowledge receipt of the request to the requester and forward the request to the Authorizing Official for action.

(b) The Authorizing Official will promptly identify and review the records encompassed by the request. The Authorizing Official will prepare a written response (1) granting the request, (2) denying the request, (3) granting/denying it in part, (4) replying with a response stating that the request has been referred to another agency under § 1004.4(f) or § 1004.6(e), (5) informing the requester that responsive records cannot be located or do not exist.

(c) Where a request involves records which are in the custody of or are the concern of more than one Authorizing Official, the Freedom of Information Officer will identify all concerned Authorizing Officials, send copies of the request to them and forward the request for action to the Authorizing Official that can reasonably be expected to have custody of most of the requested records. This Authorizing Official will prepare a DOE response to the requester consistent with paragraph (b) of this section, which will identify any other Authorizing Official, having responsibility for the denial of records.

(d) Time for processing requests. (1) Action pursuant to paragraph (b) of this section will be taken within 10 working days of receipt of a request for DOE records ("receipt" is defined in § 1004.4(a)), except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Authorizing Official of the reasons for such extension and the date on which a determination is expected to be dispatched, then the Authorizing Official may take an extension not to exceed 10 working days.

(2) For purposes of this section and § 1004.8(d), the term "unusual circumstances" may include but is not limited to the following:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the offices processing the request;

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are responsive to a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the Department having substantial subject matter interest therein.

(3) The requester must be promptly notified in writing of the extension, the reasons for the extension, and the date on which a determination is expected to be made.

(4) If no determination has been made at the end of the 10-day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the responsible Authorizing Official will nevertheless continue to process the request. If the DOE is unable to provide a response within the statutory period, the Authorizing Official will inform the requester of the reason for the delay; the date on which a determination may be expected to be made; that the requester can seek remedy through the courts, but ask the requester to forego such action until a determination is made.

(5) Nothing in this part shall preclude the Authorizing Official and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement will be confirmed

in writing and will clearly specify the total time agreed upon.

§ 1004.6 Requests for classified records.

(a) All requests for classified records and Unclassified Controlled Nuclear Information will be subject to the provisions of this part with the special qualifications noted below.

(b) All requests for records made in accordance with this part, except those requests for access to classified records which are made specifically pursuant to the mandatory review provisions of Executive Order 12356 or any successor thereto, may be automatically considered a Freedom of Information Act request.

(c) Concurrence of the Director of Classification is required on all responses involving requests for classified records. The Director of Classification will be informed of the request by either the Freedom of Information Officer or the Authorizing Official to whom the action is assigned, and will advise the office originating the records, or having responsibility for the records, and consult with such office or offices prior to making a determination under this section.

(d) The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material, will be concurred in by the Director of Classification who will be the Denying Official for the classified portion of such records in accordance with §§ 1004.5(c) and 1004.7(b)(2). If other DOE officials or appropriate officials of other agencies are responsible for denying any portion of the record, their names and titles or positions will be listed in the notice of denial in accordance with §§ 1004.5(c) and 1004.7(b)(2) and it will be clearly indicated what portion or portions they were responsible for denying.

(e) Requests for DOE records containing classified information received from another agency, and requests for classified documents originating in another agency, will be coordinated with or referred to the other agency consistent with the provisions of § 1004.4(f). Coordination or referral of information or documents subject to this section will be effected by the Director of Classification (in consultation with the Authorizing Official) with the appropriate official of the other agency.

§ 1004.7 Responses by authorizing officials: Form and content.

(a) *Form of grant.* Records requested pursuant to § 1004.4 will be made

available promptly, when they are identified and determined to be nonexempt under this Regulation, the Freedom of Information Act, and where the applicable fees are \$15 or less or where it has been determined that the payment of applicable fees should be waived. Where the applicable fees exceed \$15, the records may be made available before all charges are paid.

(b) *Form of denial.* A reply denying a request for a record will be in writing. It will be signed by the Denying Official pursuant to § 1004.5 (b) or (c) and will include:

(1) *Reason for denial.* A statement of the reason for denial, containing a reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, and a statement of why a discretionary release is not appropriate.

(2) *Persons responsible for denial.* A statement setting forth the name and the title or position of each Denying Official and identifying the portion of the denial for which each Denying Official is responsible.

(3) *Segregation of nonexempt material.* A statement or notation addressing the issue of whether there is any segregable nonexempt material in the documents or portions thereof identified as being denied.

(4) *Adequacy of search.* Although a determination that no such record is known to exist is not a denial, the requester will be informed that a challenge may be made to the adequacy of the search by appealing within 30 calendar days to the Office of Hearings and Appeals.

(5) *Administrative appeal.* A statement that the determination to deny documents made within the statutory time period, may be appealed within 30 calendar days to the Office of Hearings and Appeals.

§ 1004.8 Appeal of initial denials.

(a) *Appeal to Office of Hearings and Appeals.* When the Authorizing Official has denied a request for records in whole or in part or has responded that there are no documents responsive to the request consistent with § 1004.4(d), or when the Freedom of Information Officer has denied a request for waiver of fees consistent with § 1004.9, the requester may, within 30 calendar days of its receipt, appeal the determination to the Office of Hearings and Appeals.

(b) *Elements of appeal.* The appeal must be in writing, addressed to the Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW.,

Washington, DC 20585 and both the envelope and letter must be clearly marked "Freedom of Information Appeal." The appeal must contain a concise statement of grounds upon which it is brought and a description of the relief sought. It should also include a discussion of all relevant authorities, including, but not limited to, DOE (and predecessor agencies) rulings, regulations, interpretations and decisions on appeals and any judicial determinations being relied upon to support the appeal. A copy of the letter containing the determination which is being appealed, must be submitted with the appeal.

(c) *Receipt of appeal.* An appeal will be considered to be received for purposes of 5 U.S.C. 552(a)(6) upon receipt by the appeal authority. Documents delivered after regular business hours of the Office of Hearings and Appeals are considered received on the next regular business day.

(d) *Action within 20 working days.* (1) The appeal authority will act upon the appeal within 20 working days of its receipt, except that if unusual circumstances (as defined in § 1004.5(d)(2)) require an extension of time before a decision on a request can be reached, the appeal authority may extend the time for final action for an additional 10 working days less the number of days of any statutory extension which may have been taken by the Authorizing Official during the period of initial determination.

(2) The requester must be promptly notified in writing of the extension, setting forth the reasons for the extension, and the date on which a determination is expected to be issued.

(3) If no determination on the appeal has been issued at the end of the 20-day period or the last extension thereof, the requester may consider his administrative remedies to be exhausted and seek a review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be issued within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be issued, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the records are situated, or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(4) Nothing in this part will preclude the appeal authority and a requester

from agreeing to an extension of time for the decision on an appeal. Any such agreement will be confirmed in writing by the appeal authority and will clearly specify the total time agreed upon for the appeal decision.

(e) *Form of action on appeal.* The appeal authority's action on an appeal will be in writing and will set forth the reason for the decision. It will also contain a statement that it constitutes final agency action on the request and that judicial review will be available either in the district in which the requester resides or has a principal place of business, the district in which the records are situated, or in the District of Columbia. Documents determined by the appeal authority to be documents subject to release will be made promptly available to the requester upon payment of any applicable fees.

(f) *Classified records and records covered by section 148 of the Atomic Energy Act.* The Secretary of Energy or his designee will make the final determination concerning appeals involving the denial of requests for classified information or the denial of requests for information falling within the scope of section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

§ 1004.9 Fees for providing records.

(a) *Fees to be charged.* The DOE will charge fees that recoup the full allowable direct costs incurred. The DOE will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The DOE may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, the DOE will ensure that the ultimate cost to the requester is no greater than it would be if the DOE itself had performed these tasks. In no case will the DOE contract out responsibilities which the FOIA provides that only the agency may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. Where the DOE can identify documents that are responsive to a request and are maintained for public distribution by other agencies such as the National Technical Information Service and the Government Printing Office, the Freedom of Information Officer will inform requesters of the procedures to obtain records from those sources.

(1) Manual searches for records.

Whenever feasible, the DOE will charge for manual searches for records at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search.

(2) Computer searches for records.

The DOE will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary.

(3) Review of records. The DOE will charge requesters who are seeking documents for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review (i.e., the review undertaken the first time the DOE analyzes the applicability of a specific exemption to a particular record or portion of a record. The DOE will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(4) Duplication of records. The DOE will make a per-page charge for paper copy reproduction of documents. At present, the charge for paper to paper copies will be five cents per page and the charge for microform to paper copies will be ten cents per page. For computer generated copies, such as tapes or printouts, the DOE will charge the actual cost, including operator time, for production of the tape or printout. For other methods of reproduction or duplication, we will charge the actual direct costs of producing the document(s).

(5) Other charges. It shall be noted that complying with requests for special services such as those listed below is entirely at the discretion of this agency. Neither the FOIA nor its fee structure cover these kinds of services. The DOE will recover the full direct costs of providing services such as those enumerated below to the extent that we elect to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(6) Restrictions on assessing fees.

With the exception of requesters seeking documents for a commercial use, section

(a)(4)(A)(iv) of the Freedom of Information Act, as amended, DOE will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, DOE will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, DOE will not begin to assess fees until after the Department has provided the free search and reproduction. For example, if a request involves two hours and ten minutes of search time and results in 105 pages of documents, DOE will charge for only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than \$15.00, the amount DOE incurs to process a fee collection, no charges would be assessed. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will be normally be "8½×11" or "11×14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction. Similarly, the term "search time" is based on a *manual search*. To apply this term to searches made by computer, the DOE will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the computer operator conducting the search, DOE will begin assessing charges for computer search.

(7) Notification of charges. If the DOE determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, the requester will be informed of the estimated amount of fees, unless the requester has previously indicated a willingness to pay the amount estimated by the agency. In cases where a requester has been notified that actual or estimated fees may amount to more than \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph will offer him the opportunity to confer with DOE personnel in order to reformulate his request to meet his needs at a lower cost.

(8) Waiving or reducing fees. The DOE will furnish documents without

charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in the commercial interest of the requester. This fee waiver standard thus sets forth two basic requirements, both of which must be satisfied before fees will be waived or reduced. First it must be established that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. Second, it must be established that disclosure of the information is not primarily in the commercial interest of the requester. When these requirements are satisfied, based upon information supplied by a requester or otherwise made known to the DOE, the waiver or reduction of a FOIA fee will be granted. In determining when fees should be waived or reduced the Freedom of Information Officer should address the following two criteria:

(i) That disclosure of the Information "is in the Public Interest Because it is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government." Factors to be considered in applying this criteria include but are not limited to:

(A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) The contribution to an understanding by the general public of the subject likely to result from disclosure; and

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(ii) If Disclosure of the Information "is Not Primarily in the Commercial Interest of the Requester." Factors to be considered in applying this criteria include but are not limited to:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) The primary interest in disclosure: Whether the magnitude of the identified

commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Freedom of Information Officer will make determinations regarding categories of requesters as defined at § 1004.2. The Headquarters Freedom of Information Officer will assist field Freedom of Information Officers in categorizing requesters, and will resolve conflicting categorizations. The FOIA prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* When the DOE receives a request for documents which appears to be for commercial use, charges will be assessed to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The DOE will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* The DOE will provide documents to requesters in this category for the cost of reproduction only, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* The DOE will provide documents to requesters in this category for the cost of reproduction only, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1004.2(m), and his or her request must not be made for a commercial use. With respect to this class of requesters, a request for records supporting the news dissemination function of the requester will not be considered to be a request for a commercial use.

(4) *All other requesters.* The DOE will charge requesters who do not fall into any of the above categories fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Moreover, requests from individuals for records about themselves filed in DOE systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974.

(5) *Charging interest—notice and rate.* Interest will be charged those requesters who fail to pay fees. The DOE will begin to assess interest charges on the amount billed on the 31st day following the day on which the billing was sent to the requester. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(6) *Charges for unsuccessful search.* The DOE will assess charges for time spent searching even if the search fails to identify responsive records or if records located are determined to be exempt from disclosure. If the DOE estimates that search charges are likely to exceed \$25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice will offer the requester the opportunity to confer with agency personnel in order to reformulate the request to reduce the cost of the request.

(7) *Aggregating requests.* A requester may not file multiple requests each seeking portions of a document or documents, solely to avoid payment of fees. When the DOE reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the DOE will aggregate any such requests and charge the appropriate fees. The DOE may consider the time period in which the requests have been made in its determination to aggregate the related requests. In no case will DOE aggregate multiple requests on unrelated subjects from one requester.

(8) *Advance payments.* Requesters are not required to make an advance payment (i.e., payment before action is commenced or continued on a request) unless:

(i) The DOE estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00. In such cases, the DOE will notify the requester of the likely

cost and obtain a satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(ii) A requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). The DOE will require the requester to pay the full amount delinquent plus any applicable interest as provided in paragraph (b)(5) of this section, or demonstrate that he has, in fact, paid the delinquent fee; and to make an advance payment of the full amount of the estimated current fee before we begin to process a new request or a pending request from that requester.

When the DOE acts under paragraphs (b)(8) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after the DOE has received fee payments described above.

(c) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* The DOE will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, where appropriate, to encourage payment of fees.

§ 1004.10 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in paragraph (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory records; internal procedures and communications; materials exempted from disclosure by other statutes; confidential, commercial, and financial information; and matters involving personal privacy.

(b) Specifically, the exemptions in 5 U.S.C. 552(b) will be applied consistent with § 1004.1 of these regulations to matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5

U.S.C. 552(b)), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; for example Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) are covered by this exemption;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) Any reasonably segregated non-exempt portion of a record will be provided to a requester. The DOE will

delete portions which are withholdable under the exemptions listed above.

§ 1004.11 Handling information of a private business, foreign government, or an international organization.

(a) Whenever a document submitted to the DOE contains information which may be exempt from public disclosure, it will be handled in accordance with the procedures in this section. While the DOE is responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, the DOE will consider the submitter's views (as that term is defined in this section) in making its determination. Nothing in this section will preclude the submission of a submitter's views at the time of the submission of the document to which the views relate, or at any other time.

(b) When the DOE may determine, in the course of responding to a Freedom of Information request, not to release information submitted to the DOE (as described in paragraph (a) of this section, and contained in a requested document) without seeking any or further submitter's views, no notice will be given the submitter.

(c) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described in paragraph (b) of this section without having for consideration the submitter's views, the submitter shall be promptly notified and provided an opportunity to submit his views on whether information contained in the requested document (1) is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, (2) contains information referred to in 18 U.S.C. 1905, or (3) is otherwise exempt by law from public disclosure. The DOE will make its own determinations as to whether any information is exempt from disclosure. Notice of a determination by the DOE that a claim of exemption made pursuant to this paragraph is being denied will be given to a person making such a claim no less than seven (7) calendar days prior to intended public disclosure of the information in question. For purposes of this section, notice is deemed to be given when mailed to the submitter at the submitter's last known address.

(d) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described in paragraph (b) of this section and, without recourse to paragraph (c) of this section, previously has received the submitter's views, the DOE will consider such submitter's

views and will not be required to obtain additional submitter's views under the procedure described in paragraph (c) of this section. The DOE will make its own determination with regard to any claim that information be exempted from disclosure. Notice of the DOE's determination to deny a claim of exemption made pursuant to this paragraph will be given to a person making such a claim no less than seven (7) calendar days prior to its intended public disclosure.

(e) Notwithstanding any other provision of this section, DOE offices may require a person submitting documents containing information that may be exempt by law from mandatory disclosure to (1) submit copies of each document from which information claimed to be confidential has been deleted or (2) require that the submitter's views be otherwise made known at the time of the submission. Notice of a determination by the DOE that a claim of exemption is being denied will be given to a person making such a claim no less than seven (7) calendar days prior to intended public disclosure of the information in question. For purposes of this section, notice is deemed to be given when mailed to the submitter at the submitter's last known address.

(f) *Criteria for determining the applicability of 5 U.S.C. 552(b)(4).* Subject to subsequent decisions of the Appeal Authority, criteria to be applied in determining whether information is exempt from mandatory disclosure pursuant to Exemption 4 of the Freedom of Information Act include:

(1) Whether the information has been held in confidence by the person to whom it pertains;

(2) Whether the information is of a type customarily held in confidence by the person to whom it pertains and whether there is a reasonable basis therefore;

(3) Whether the information was transmitted to and received by the Department in confidence;

(4) Whether the information is available in public sources;

(5) Whether disclosure of the information is likely to impair the Government's ability to obtain similar information in the future; and

(6) Whether disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

(g) When the DOE, in the course of responding to a Freedom of Information request, determines that information exempt from the mandatory public

disclosure requirements of the Freedom of Information Act is to be released in accordance with § 1004.1, the DOE will notify the submitter of the intended discretionary release no less than seven (7) days prior to intended public disclosure of the information in question.

(h) As used in this section, the term "submitter's views" means, with regard to a document submitted to the DOE, an item-by-item indication, with accompanying explanation, addressing whether the submitter considers the information contained in the document to be exempt from the mandatory public disclosure requirements of the Freedom of Information Act, to be information referred to in 18 U.S.C. 1905, or to be otherwise exempt by law from mandatory public disclosure. The accompanying explanation shall specify the justification for nondisclosure of any information under consideration. If the submitter states that the information comes within the exemption in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, the submitter shall include a statement specifying why such information is privileged or confidential and, where appropriate, shall address the criteria in paragraph (f) of this section. In all cases, the submitter shall address the question of whether or not discretionary disclosure would be in the public interest.

§ 1004.12 Computation of time.

Except as otherwise noted, in computing any period of time prescribed or allowed by this part, the day of the event from which the designated period of time begins to run is not to be included; the last day of the period so computed is to be included; and Saturdays, Sundays, and legal holidays are excepted.

[FR Doc. 88-9728 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

Design Standards for Highways; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is updating the list of citations to publications which are incorporated in 23 CFR Part 625 for application on Federal-aid projects. The

list includes citations to publications containing standards, specifications, policies, guides, and references which have been approved for application in the geometric and structural design of federally funded highways. The revision amends the regulation by adding a publication that contains guidance and informational material.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT:

Mr. Seppo I. Sillan, Chief, Geometric and Roadside Design Branch, Office of Engineering (202) 366-1327 or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The standards, specifications policies, guides and references (publications) approved by the FHWA for application on all Federal-aid highway projects have been incorporated by reference or listed in 23 CFR Part 625. Periodically, the publications that are included in Part 625 are reviewed by the FHWA and initiating organizations. As a result of these reviews, certain publications are added, updated or replaced with new editions.

In order for Part 625 to reflect a complete and accurate list of guides and references pertinent to highway design, the publication entitled "Special Report 214, Designing Safer Roads, Practices for Resurfacing, Restoration, and Rehabilitation, Transportation Research Board (TRB), 1987", is being added to § 625.5. Special Report 214 is the product of a provision in the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097.

To meet the objectives of the cited legislation, the Secretary of Transportation, acting through FHWA, requested the National Academy of Sciences to study the safety cost effectiveness of highway geometric design standards and recommend minimum standards for resurfacing, restoration and rehabilitation (RRR) projects on existing Federal-aid highways, except freeways. The Transportation Research Board, a unit of the National Research Council under the auspices of the National Academy of Sciences conducted the study.

The board assembled a committee of experts in the various disciplines needed to develop and apply geometric design standards and assess their impact on safety, highway serviceability, cost, environment and system administration. Committee

members included individuals with experience in highway design, traffic engineering, highway safety, accident analysis, highway construction, statistics, economics, highway administration and law.

Special Report 214 consists of seven chapters which discuss the deliberations of the committee. In addition to a chapter relating to background and issues (Chapter 1) and one containing recommendations (Chapter 7), five other chapters discuss six key areas of inquiry, which taken together, provide the technical foundation necessary for specific recommendations.

It was necessary to understand the relationship between standards and other parts of the RRR process to analyze design standards. In order to obtain a balanced picture, reviews of prior studies and analyses of nationwide data bases were supplemented with in-depth case studies of highway practices in 15 States and interviews with local public works officials throughout the country. The information learned and the conclusions drawn from these reviews, case studies and interviews are presented in Chapter 2 of the report.

The trade-off between the cost of geometric improvements and their safety pay off is fundamental to the issue of minimum RRR design standards. To make this trade-off requires quantitative knowledge of the relationships between safety and different roadway features. To help provide a basis for the necessary judgments, the committee sponsored critical reviews of prior research and two special studies that addressed major gaps in existing knowledge. The study committee made judgments about the most probable relationships between safety and key highway features using the most credible data available. These judgments are presented in Chapter 3.

Like the relationship between safety and geometric design, the relationships between cost and geometric design are critical in determining how safety and road repair needs can most effectively be balanced. To develop cost relationships, the committee examined published cost data, records and estimating procedures for a sample of State highway agencies throughout the country. This work supplemented reviews of existing nationwide cost records and data sets. The results of the analysis of the relationship between cost and geometric design are contained in Chapter 4.

Two principal questions that underlie the debate over RRR standards are:

—What are the cost and safety trade-offs of making incremental geometric

improvements to existing highways?, and
 —How do minimum RRR standards affect the balance between preserving highways and improving safety on a system wide basis, when available funds are limited?

These questions are addressed from project-level and system-level perspectives in Chapter 5 using the safety and cost relationships developed in the previous chapters.

Tort liability has become an increasing concern for highway agencies because of the number of claims filed against them. These claims allege negligence in the design and operation of public highways. A discussion of tort liability and its characteristics is incorporated into the report in Chapter 6.

Supplementing the discussions in the five chapters outlined above are 12 appendices. These appendices contain summaries of standards, information concerning RRR programs in the case study States and local agencies, a summary of detailed safety relationships, the relationship between accidents and various geometric features, accident statistics, costs, effects on travel time and alternate width standards in system analysis. The appendices contain the detailed information and relationships that support the discussions and conclusions in the five chapters which comprise the core of the report. They provide analytical models that can be used to perform the analyses illustrated in the text discussion.

The Special Report concludes that design standards is alone cannot address those factors that collectively limit the safety gains of federally funded RRR projects. Within the overall process of planning, selecting and designing RRR projects, the influence of standard is small. The RRR standards, which can affect only a few key design features, cannot be tailored to fit all possible, or even most, circumstances and constraints encountered in a given State or a specific site. Therefore, the TRB report does not recommend the adoption of a specific nationwide standard. It does, however, recommend a variety of practices that encompass the entire RRR process with a special focus on design practice. In selected instances, Federal, State and local highway agencies can use the recommendations, along with design aids, published manuals and local experience to develop or modify minimum design standards for RRR projects.

Although the study provides guidance in many areas, more detailed guidelines,

further research and increased safety education for designers will be needed to address many of the questions that remain about how to best enhance safety through highway design and operations. Nevertheless, the study committee concluded that a design process that emphasizes safety, even with some parts that will be handled differently by different agencies and designers, will ultimately produce better RRR projects.

A total of 23 recommendations are included in the report. These recommendations are organized into five categories:

1. **Safety Conscious Design Process**—Recommended general practices that comprise a systematic process for considering safety during RRR project design.

2. **Design Practices for Key Highway Features**—Recommendations that specify the existing highway conditions that warrant a geometric improvement outright or a serious evaluation of a geometric improvement, as well as design practices that should be followed routinely for key elements.

3. **Other Design Procedures and Assumptions**—Recommendations that cover design factors such as speed and traffic volume, as well as guides for selecting design values for geometric improvements and seeking design exceptions.

4. **Planning and Programming RRR Projects**—Recommendations for including safety considerations in the planning and programming of RRR Projects.

5. **Safety Research and Training**—Recommendations for increased attention to highway safety research, training and education.

The overall policy and guidance for designing RRR projects contained in the existing 23 CFR Part 625 are consistent with the current statutory requirements and the scope of the TRB recommendations. Therefore, the FHWA concurs in the findings and recommendations for developing and designing RRR projects in the TRB Special Report 214. The addition of this document to the list of Guides and References will formally establish the report as a primary source document for revising existing or developing new RRR standards by the States.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The revision contained in this amendment is

primarily editorial in nature. The publication being added contains material which is not in fact a standard or requirement. This new nonregulatory publication simply provides guidance and information for use at the discretion of the designer. Since the revision included in this document is technical in nature and makes no substantive changes to the regulations, the FHWA finds good cause to make the amendment final without the opportunity for comment and without a 30-day delay in effective date required by the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information due to the technical nature of the document. Accordingly, the amendment is effective upon publication.

Since this amendment does not alter the basic design criteria and the burden imposed on the States is not affected, the impact on the overall highway program is negligible. Therefore, a fully regulatory evaluation has not been prepared. For the foregoing reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This nonregulatory document being added to 23 CFR Part 625 provides only guidance and information for use at the discretion of the designer.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

In consideration of the foregoing, the Federal Highway Administration is amending Chapter I of Title 23, Code of Federal Regulations, Part 625 as set forth below.

Issued on April 25, 1988.

Robert E. Farris,
Deputy Administrator, Federal Highway
Administration.

The FHWA hereby amends Chapter I
of Title 23, Code of Federal Regulations,
as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625
continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49
CFR 1.48(b).

2. Section 625.5 is amended by adding
a new paragraph (a)(11) to read as
follows.

§ 625.5 Guides and references.

(a) * * *
(11) Special Report 214, Designing
Safer Roads, Practices for Resurfacing,
Restoration, and Rehabilitation, TRB
1987.[5]

[FR Doc. 88-9768 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner

24 CFR Part 232

[Docket No. R-88-1389; FR-2490]

FHA Insurance of Mortgages Covering Nursing Homes and Similar Projects

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

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR Part
232 to (1) make public nursing homes
eligible for mortgage insurance and (2)
establish an alternative procedure for
satisfying the "certification of need"
requirement governing mortgage
insurance of nursing homes and
intermediate care facilities. The rule
implements section 410 of the Housing
and Community Development Act of
1987.

EFFECTIVE DATE: June 16, 1988.

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

SUPPLEMENTARY INFORMATION: Section
410(a) of the Housing and Community
Development Act of 1987 authorizes
FHA insurance of mortgages covering
public nursing homes. The Senate
Committee report (Senate Report 100-21,
March 29, 1987), in explaining this
provision states:

Currently, FHA insurance is limited to
proprietary and private nonprofit institutions.
However, public health care facilities require
similar insurance, which in the absence of
FHA has become prohibitively expensive and
has driven up the health care costs primarily
of low and moderate income people.

In compliance with section 410(a) of
the 1987 Act, this rule revises the
definition of "nursing home" contained
in 24 CFR 232.1 to include public nursing
homes.

Section 410(b) of the Housing and
Community Development Act of 1987
establishes an alternative procedure for
satisfying the "certification of need"
requirement governing mortgage
insurance for nursing homes and
intermediate care facilities.

Under existing regulations there is a
requirement that individual States
certify the need for such facilities. The
Congress has found, however, that an
increasing number of States no longer
have the capacity to carry out the
certification of need process, and that
alternative procedures for establishing
the need for a facility are required.

The procedure established in section
410(b) authorizes the use of private
financial consultants but otherwise
mirrors the procedure used by States to
conduct the assessment necessary to
grant a certification of need. The
alternative assessment provided for in
this rule is designed to establish the
facts related to need as fully as a State
certification.

Under section 410(b), if no State
certification agency exists, or if the
State agency exists but is not
empowered to provide a certification
that there is a need for the home or
facility or combined home and facility,
the Secretary of HUD may not insure a
mortgage unless (i) the State in which
the home or facility is located has
conducted or commissioned and paid for
the preparation of an independent study
of market need and feasibility that (1) is
prepared in accordance with the
principles established by the American
Institute of Certified Public Accountants;
(2) assesses, on a marketwide basis, the
impact of the proposed home or facility
or combined home and facility on, and
its relationship to, other health care
facilities and services, the percentage of
excess beds, demographic projections,
alternative health care delivery systems,
and the reimbursement structure of the

home, facility, or combined home and
facility; (3) is addressed to and is
acceptable to the Secretary in form and
substance; and (4) in the event the State
does not prepare the study, is prepared
by a financial consultant who is selected
by the State or the applicant for
mortgage insurance and is approved by
the Secretary. The State must also
comply with the other requirements
which must be met by a State agency
designated in accordance with section
604(a)(1) or section 1521 of the Public
Health Service Act. The proposed
mortgagor may reimburse the State for
the cost of the independent feasibility
study.

In addition to this general alternative
procedure, the new law also provides
for a special procedure in the case of a
small intermediate care facility for the
mentally retarded or developmentally
disabled, or a board and care home
housing less than 10 individuals. The
State program agency or agencies
responsible for licensing, certifying,
financing, or monitoring the facility or
home may, in lieu of the above-
described alternative certification
procedures, provide the Secretary with
"written support identifying the need for
the facility or home".

Section 410(c) requires the Secretary
of HUD to issue such regulations as may
be necessary to carry out section 410 by
not later than the expiration of the 90-
day period following the date of the
enactment of the 1987 Act.

This rule revises 24 CFR 232.6 to adopt
the 1987 Act certification provisions
virtually without elaboration. One
exception is that, in addition to requiring
that the independent study of market
need and feasibility be addressed to and
acceptable to the Secretary, the rule
provides that it must also be certified as
acceptable to the appropriate State
agency or official as to form and
substance. The rule also provides that
private financial consultants will be
selected by the appropriate State
agency—not directly by the lender. The
Department believes that it is the intent
of section 410(b) to continue to the
maximum extent practicable, State
participation in, and responsibility for,
certification of nursing homes and
intermediate care facilities. The
exceptions noted above are consistent
with that basic statutory purpose and
are within the regulatory discretion of
the Department.

Finally, with respect to the special
procedure for small intermediate care
facilities for the mentally retarded or
developmentally disabled (§ 232.6(b) of
the rule), a statutory reference to small
board and care homes is omitted. Such

homes are not currently subject to a certification of need procedure. Applying this new special procedure to small homes would only subject them to an additional administrative burden. It would not relieve them of any existing burden. The Department does believe that this is what the Congress intended. The rule defines "small intermediate care facilities" as those housing less than 50 individuals.

Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under HUD section 232 full insurance has not demonstrated any substantial impact on small entities. This alternative certification procedure would supplement and enhance the current insurance program—especially for small entities.

This rule was listed as sequence number 946 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13877) under Executive Order 12291 and the Regulatory Flexibility Act.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paper Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB control numbers, when assigned, will be announced by separate publication in the Federal Register.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment,

productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

Section 410(c) of the Housing and Community Development Act of 1987 requires the Secretary of HUD to issue such regulations as may be necessary to carry out section 410 by not later than 90 days following enactment. The rule implements the statutory instruction regarding alternative means of securing certifications of need with a minimum of regulatory gloss and without extraneous procedural requirements. Accordingly, the Department believes that final rulemaking is appropriate and that delaying implementation to await public comment would be contrary to the public interest. Nevertheless, HUD invites comments on the manner in which section 410 of the Act has been implemented and will be considering adjustments in the procedures set out in the rule. Any comments received within a 30-day period will be carefully considered in carrying out this assessment.

The catalog of Federal Domestic Assistance program number is 14.129.

List of Subjects in 24 CFR Part 232

Fire prevention, Health facilities, Mortgage insurance, Nursing homes, Intermediate care facilities, Board and care homes.

Accordingly, 24 CFR Part 232 is amended as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 is revised to read as follows:

Authority: Secs. 211, 232 and 244, National Housing Act (12 U.S.C. 1715b, 1715w, and 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 232.1, paragraph (i) is revised to read as follows:

§ 232.1 Definitions.

(i) "Nursing Home" means a public facility, proprietary facility or a facility of a private nonprofit corporation or association, licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical

services. The term also includes additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day. In all such facilities, the nursing care and medical services must be prescribed by, or performed under general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

3. Section 232.6 is revised to read as follows:

§ 232.6 Required certificates.

(a)(1) Except as provided in paragraph (a)(2) of this section, every application for insurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which project is or will be located, designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(i) There is need for the project.
(ii) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care facility or combined home and facility as required by paragraph (a)(1)(i) of this section, the Secretary shall not insure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that—

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds, demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility;

(iii) Is certified as acceptable by an appropriate State agency or official, and is addressed to and acceptable to the Secretary in form and substance; and

(iv) In the event the State does not prepare the study, is prepared by a financial consultant who is selected by

the State and is approved by the Secretary.

The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

(b) In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, housing less than 50 individuals, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the certification of need requirement of paragraph (a)(1)(i) of this section, provide the Secretary with written support identifying the need for the facility or home.

(c) Every application for insurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1616(e) of the Social Security Act.

(d) No mortgage shall be insured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

Dated: April 18, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-9797 Filed 5-2-88; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Removal of Regulatory Language Made Obsolete by Amendments to the ADEA and Reenactment of the Exemption for Tenured Faculty; Correction

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final regulations; correction.

SUMMARY: This document amends the Commission's ADEA regulations to correct an oversight by the Office of the Federal Register in the printing of a regulation appearing in the February 29, 1988 issue of the *Federal Register* at 53 FR 5971. The revised regulation appearing in this document reflects changes made in 1986 to the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.* See

generally Age Discrimination in Employment Amendments of 1986, Pub. L. No. 99-592, 100 Stat. 3342 (1986). Specifically, these amendments/revisions remove language made obsolete by the lifting of the Act's age 70 cap. These changes in the law generally became effective on January 1, 1987 (exceptions may apply in situations involving collective bargaining agreements).

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT:

James E. Cooks, Attorney Advisor, ADEA Division, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507, (202) 634-6423.

In FR Doc. 88-4219 appearing in the *Federal Register* of February 19, 1988 at 53 FR 5971, item number 4, is corrected to read as follows:

4. Section 1625.8 is revised to read as follows:

§ 1625.8 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that

* * * It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act except that no such seniority system * * * shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual. * * *

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers.

(b) Adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act.

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will not be considered a bona fide seniority system within the meaning of the Act.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against

individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. The "bona fides" of such a system will be closely scrutinized to ensure that such a system is, in fact, bona fide under the ADEA.

Signed this 18th day of April, 1988 at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88-9731 Filed 5-2-88; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF EDUCATION

34 CFR Part 33

Program Fraud Civil Remedies Act Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adopts new regulations implementing the Program Fraud Civil Remedies Act of 1986 (PFCRA). The PFCRA requires the Secretary to issue implementing regulations. These final regulations provide in detail what types of fraud and false statement are covered by the PFCRA and the procedures the Department of Education will use to enforce the PFCRA.

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

FOR FURTHER INFORMATION CONTACT:

Sarah L. Kemble, Office of the General Counsel, U.S. Department of Education, Room 4121, 400 Maryland Avenue SW., Washington, DC, 20202; (202) 732-2730.

SUPPLEMENTARY INFORMATION: (a) The PFCRA reflects congressional concern about the large number of unchecked false and fraudulent claims and statements that collectively are causing a substantial loss of Federal funds and threatening the integrity of Federal programs. To prosecute smaller cases in the courts costs the Federal Government more than it can recover in criminal and civil penalties. Thus, it has not been practical for the Government to prosecute all these cases through the Federal court system under the

applicable pre-existing civil and criminal statutes. The PFCRA is meant to remedy this situation. It does not create new types of violations but, instead, provides for administrative rather than judicial enforcement of the smaller cases, which is not as costly or time consuming.

(b) On July 22, 1987 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the *Federal Register*, (52 FR 27650).

(c) These final regulations make several substantive changes, including those made because of public comments on the NPRM. In addition, the regulations make a number of clarifying and editorial changes to the NPRM.

Analysis of Comments and Substantive Changes

In response to the Secretary's invitation in the NPRM, three parties—one of which represented a number of States—submitted comments on the proposed regulations. An analysis of the comments and of the substantive changes in the regulations since publication of the NPRM follows.

Definitions. (Section 33.2)

Comment: All three parties commented on the definitions section. Two of the parties—including the one representing a number of States—argued that the proposed definition of "person" went beyond the Act by including States, other public political entities, and Indian tribes. The commenters recommended that the Secretary delete reference to these entities.

The other party felt that the proposed definition of "representative," limiting that term to attorneys, was too restrictive and unfair to persons who could not afford an attorney. The commenter recommended that administrative law judges (ALJs) have the discretion to determine on a case-by-case basis whether a non-attorney was qualified to be a representative.

Discussion: With regard to the definition of "person", the Secretary has decided that the commenter has provided the better legal interpretation. As the commenter noted, the governing statute (31 U.S.C. 3801(a)(6)) contains a definition of "person" which does not mention States or other public entities; and the legislative history does not reflect any Congressional intent to include them. Under these circumstances, the executive branch should not imply that Congress meant to cover States and other public entities.

As to who might be qualified to serve as a representative, the governing statute (31 U.S.C. 3808(g)(2)(F)) specifies that the Secretary shall by regulation

promulgate procedures to permit any person alleged to be liable for fraud under the Act to be "represented by counsel or such other qualified representative as the authority head may specify in such regulations." The Secretary interprets this provision to require some regulatory standards for representatives other than attorneys. On further reflection, the Secretary also agrees with the commenter that the definition should permit a defendant who might not be able to afford counsel to choose a non-attorney representative, provided that the defendant in making that choice appreciates the nature and serious consequences of a PFCRA proceeding.

Changes: The Secretary has revised the definition of "person" to delete States, other public political entities, and Indian tribes.

The Secretary has revised the definition of "representative" to include a non-attorney designated in writing by a party, if the party certifies that he or she understands the nature of a PFCRA proceeding and its consequences, and understands the right to self-representation. See discussion below of a corresponding change to § 33.18, authorizing an ALJ to disqualify an ineffective non-attorney representative.

Default on Failure to File an Answer. (Section 33.10)

Comment: One party had two comments regarding this section. The first comment concerned the automatic imposition of the maximum penalty and assessment allowed under the statute (that is, \$5000, and, for a false claim, twice the amount of a claim on which the Government has made payment). The commenter asserted that the automatic penalty is not in keeping with the statute and is too harsh because it could result in liability out of proportion to the degree of wrongdoing. In this connection the commenter recommended that the ALJ should be given the discretion to impose a penalty in an amount that is related to the magnitude of the wrongdoing. The commenter also criticized—as too vague and too harsh—the proposed requirement that default judgment must be entered unless "extraordinary circumstances" excuses the default (paragraphs (e), (f), and (j)). The commenter suggested that the regulations state a non-exclusive list of circumstances excusing default.

Discussion: The regulations contain ample safeguards to protect a responsible person from default judgment and unfair penalties and assessments. The defendant is formally notified twice before a default judgment

can be imposed (§§ 33.7; 33.10(b)). An additional safeguard results from a change to the NPRM (§ 33.9), described elsewhere in this preamble. The defendant also has an opportunity to demonstrate that extraordinary circumstances excuse a failure to file a timely answer; and the defendant may appeal to the Secretary an ALJ's decision denying his or her motion to reopen for extraordinary circumstances (§ 33.10(f), (h)). There is also opportunity for settlement or compromise in appropriate cases at any stage of the enforcement process (§ 33.46).

The Congress has determined that \$5,000, plus twice the amount of a paid claim, is not in itself an excessive consequence for a willful false claim. The commenter's recommendation could put ALJs in the untenable position of having to exercise discretion if a defendant has failed to produce the relevant information. The recommendation could also defeat the intent of the Congress by enabling a defendant to gain an advantage by willful default.

With regard to circumstances that would excuse default, the regulations contemplate excusing default only in unusual situations in which the defendant's failure to respond is unavoidable. All relevant surrounding factors would have to be considered in determining this question. To attempt to enumerate a list of situations excusing default could be misleading.

In addition to studying all public comments, and making appropriate changes, the Secretary has on review made other changes to the NPRM as follows:

Definitions. (Section 33.2)

Discussion: As it was written in the NPRM, the definition of the term "Reviewing official" failed to include the condition stated in section 3801(a)(8)(B) of the governing statute, that the "Reviewing official" must be serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Change: The Secretary has added this condition to the regulatory definition.

Answer. (Section 33.9)

Discussion: The Secretary is concerned that, on occasion, a party might lack sufficient time to file a detailed answer within the established period. If the party's inability to meet this deadline is based on a valid reason, the Secretary feels that an extension may be warranted.

Change: The Secretary has added to § 33.9 a new paragraph (c) giving a party that can demonstrate good cause an opportunity to file a general answer within the prescribed 30-day time limit and to file the more detailed answer within an additional 30 days.

Authority of the ALJ. (Section 33.18)

Comment: In connection with the definition of "representative" (§ 33.2), a commenter recommended that the definition should be expanded to permit non-attorney representation and that ALJs have the discretion to determine on a case-by-case basis whether a non-attorney was qualified to be a representative.

Discussion: The Secretary has expanded the definition of "representative" (see "Definitions—§ 33.2", above). The PFCRA does not permit the Secretary to permit the general standard as to who qualifies as a representative to be decided by ALJs on a case-by-case basis. To do this would also impose an unwarranted affirmative burden on ALJs. The Secretary, however, believes that it would be legally sound as well as practical and ethical to authorize an ALJ to disqualify a non-attorney representative who in the ALJ's judgment is incapable of rendering reasonably effective assistance. The Supreme Court defined the standard of reasonably effective assistance in the case of *Strickland v. Washington*, 466 U.S. 668 (1984).

Change: The Secretary has added a new paragraph (b)(2) to § 33.18, giving ALJs the authority to determine that a non-attorney representative is incapable of rendering reasonably effective assistance, and to disqualify such a representative.

Reconsideration of initial decisions. (Section 33.38)

Discussion: As written in the NPRM, paragraph (f), read together with § 33.39(b)(1), could have been read to preclude appeal by the defendant to the Secretary during the pendency of a reconsideration motion.

Change: The Secretary has revised paragraph (f) and added a new paragraph (g) to make it clear that the defendant may appeal an ALJ decision to the Secretary at any time within the prescribed time limit for appeal, regardless of whether or not a motion for reconsideration is made (see statement below with respect to "Appeal to Department head" (§ 33.39)).

Appeal to Department head. (Section 33.39)

Discussion: As it was previously written, paragraph (b)(1) could have been read to preclude appeal by the defendant of an ALJ decision during the pendency of a reconsideration motion.

Change: The Secretary has revised paragraph (b)(1) to make it clear that a motion by the Department for reconsideration of an ALJ decision does not preclude the defendant from appealing that decision to the Secretary at any time during the prescribed time limit for appeal. However, a motion for reconsideration automatically stays consideration of the appeal pending resolution of the motion.

Executive Order 12291

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

Paperwork Reduction Act of 1980

The regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Educational Impact

Based on a review of the rule-making record the Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 33

Administrative practice and procedure, Fraud, Investigations, Law enforcement, Lawyers, Penalties.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: April 7, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 33 to read as follows:

PART 33—PROGRAM FRAUD CIVIL REMEDIES ACT

- Sec.
- 33.1 Basis and purpose.
- 33.2 Definitions.
- 33.3 Basis for civil penalties and assessments.
- 33.4 Investigation.
- 33.5 Review by the reviewing official.
- 33.6 Prerequisites for issuing a complaint.
- 33.7 Complaint.
- 33.8 Service of complaint.
- 33.9 Answer.

- Sec.
- 33.10 Default upon failure to file an answer.
- 33.11 Referral of complaint and answer to the ALJ.
- 33.12 Notice of hearing.
- 33.13 Parties to the hearing.
- 33.14 Separation of functions.
- 33.15 Ex parte contacts.
- 33.16 Disqualification of reviewing official or ALJ.
- 33.17 Rights of parties.
- 33.18 Authority of the ALJ.
- 33.19 Prehearing conferences.
- 33.20 Disclosure of documents.
- 33.21 Discovery.
- 33.22 Exchange of witness lists, statements and exhibits.
- 33.23 Subpoenas for attendance at hearing.
- 33.24 Protective order.
- 33.25 Fees.
- 33.26 Form, filing and service of papers.
- 33.27 Computation of time.
- 33.28 Motions.
- 33.29 Sanctions.
- 33.30 The hearing and burden of proof.
- 33.31 Determining the amount of penalties and assessments.
- 33.32 Location of hearing.
- 33.33 Witnesses.
- 33.34 Evidence.
- 33.35 The record.
- 33.36 Post-hearing briefs.
- 33.37 Initial decision.
- 33.38 Reconsideration of initial decision.
- 33.39 Appeal to Department head.
- 33.40 Stays ordered by the Department of Justice.
- 33.41 Stay pending appeal.
- 33.42 Judicial review.
- 33.43 Collection of civil penalties and assessments.
- 33.44 Right to administrative offset.
- 33.45 Deposit in Treasury of United States.
- 33.46 Compromise or settlement.
- 33.47 Limitations.

Authority: 31 U.S.C. 3801-3812, unless otherwise noted.

§ 33.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, 6101 through 6104, 100 Stat. 16674 (October 21, 1986), to be codified at 31 U.S.C. 3801 through 3812. This law (31 U.S.C. 3809) requires each Federal department head to promulgate regulations necessary to implement the provisions of the statute. (Authority: 31 U.S.C. 3809)

(b) Purpose. This part—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the Department or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for those penalties and assessments.

(Authority: 31 U.S.C. 3809)

§ 33.2 Definitions.

As used in this part:

"ALJ" means an Administrative Law Judge in the Department appointed pursuant to 5 U.S.C. 3105 or detailed to the Department pursuant to 5 U.S.C. 3344.

(Authority: 31 U.S.C. 3801(a)(7)(A))

"Benefits", as used in the definition of "statement," means anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(Authority: 31 U.S.C. 3809)

"Claim" means any request, demand, or submission—

(a) Made to the Department for property, services, or money (including money representing grants, cooperative agreements, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Department or to a party to a contract or agreement with the Department—

(1) For property or services if the United States—

(i) Provided the property or services;

(ii) Provided any portion of the funds for the purchase of the property or services; or

(iii) Will reimburse the recipient or party for the purchase of the property or services; or

(2) For the payment of money (including money representing grants, cooperative agreements, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded;

(ii) Will reimburse the recipient or party for any portion of the money paid on that request or demand; or

(iii) Will guarantee or reinsure any portion of a loan made by the party; or

(c) Made to the Department which has the effect of decreasing an obligation to pay or account for property, services, or money.

(Authority: 31 U.S.C. 3801(a)(3))

"Complaint" means the administrative complaint served by the reviewing official on the defendant under § 33.7.

(Authority: 31 U.S.C. 3809)

"Defendant" means any person alleged in a complaint under § 33.7 to be liable for a civil penalty or assessment under § 33.3.

(Authority: 31 U.S.C. 3809)

"Department" means the United States Department of Education.

(Authority: 31 U.S.C. 3809)

"Department head" means the Secretary or Under Secretary of the United States Department of Education.

(Authority: 31 U.S.C. 3801(a)(2))

"Government" means the United States Government.

(Authority: 31 U.S.C. 3809)

"Individual" means a natural person.

(Authority: 31 U.S.C. 3809)

"Initial decision" means the written decision of the ALJ required by § 33.10 or § 33.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(Authority: 31 U.S.C. 3803(h))

"Investigating official" means the Inspector General of the Department or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(Authority: 31 U.S.C. 3801(4)(A)(i))

"Knows or has reason to know," means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

(Authority: 31 U.S.C. 3801(5))

"Makes" includes the terms presents, submits, and causes to be made, presented, or submitted.

(Authority: 31 U.S.C. 3802(a))

"Person" means any individual, partnership, corporation, association, or private organization.

(Authority: 31 U.S.C. 3801(a)(6))

"Representative" means,—

(a) an attorney who is a member in good standing of the bar of any State, territory, possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) any other person designated by a party in writing, provided that the designation includes a certification that the party understands the nature and consequences of an administrative enforcement action under this part, and that he or she has the right to representation by counsel or to self-representation.

(Authority: 31 U.S.C. 3803(g)(2)(F))

"Reviewing official" means the General Counsel of the Department or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official; and

(b) Not employed in the organizational unit of the Department in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(Authority: 31 U.S.C. 3801(8))

"Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, cooperative agreement, loan, or benefit from;

the Department, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or for the grant, loan, cooperative agreement, or benefit, or if the Government will reimburse or reinsure the State, political subdivision, or party for any portion of the money or property under the contract or for the grant, cooperative agreement, loan, or benefit.

(Authority: 31 U.S.C. 3801(9))

§ 33.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed;

shall be subject, in addition to any other remedy that may be prescribed by law.

to a civil penalty of not more than \$5,000 for each claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim is considered made to the Department, a recipient, or party when that claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Department, a recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section is also subject to an assessment of not more than twice the amount of that claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. The assessment is in lieu of damages sustained by the Government because of that claim.

(Authority: 31 U.S.C. 3802(a)(1))

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement; shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement is considered made to the Department when the statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Department.

(Authority: 31 U.S.C. 3802(a)(2))

(c) No proof of specific intent to defraud is required to establish liability under this section.

(Authority: 31 U.S.C. 3801(5))

(d) In any case in which it is determined that more than one person is

liable for making a claim or statement under this section, each of those persons may be held liable for a civil penalty under this section.

(Authority: 31 U.S.C. 3802(a))

(e) In any case in which it is determined that more than one person is liable for making a claim under this section of which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any of those persons or jointly and severally against any combination of those persons.

(Authority: 31 U.S.C. 3802(a)(1); 3809)

§ 33.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3604(a) is warranted—

(1) The subpoena so issued must notify the person to whom it is addressed of the authority under which the subpoena is issued and must identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving the subpoena is required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that the documents are not available and the reasons therefore, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(Authority: 31 U.S.C. 3804(a))

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of the investigation to the reviewing official.

(Authority: 31 U.S.C. 3803(a)(1))

(c) Nothing in this section precludes or limits an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(Authority: 31 U.S.C. 3809)

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(Authority: 31 U.S.C. 3803(a)(1))

§ 33.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 33.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 33.3 of this part, the reviewing official transmits to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 33.7.

(b) The notice must include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 33.3;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

(Authority: 31 U.S.C. 3803(a)(2); 3809(2))

§ 33.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 33.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 33.3(a) with respect to a claim, the reviewing official determines that, with respect to that claim or a group of related claims submitted at the same time the claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 33.3(a) does not exceed \$150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time includes only those claims arising from the same transaction (e.g., grant, cooperative agreement, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section may be construed to limit the reviewing official's authority to join in a single

complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

(Authority: 31 U.S.C. 3803(b), (c))

§ 33.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 33.8.

(b) The complaint must state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from those claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 33.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of the regulations in this part.

(Authority: 31 U.S.C. 3803(a))

§ 33.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of receipt by the defendant or his representative.

(Authority: 31 U.S.C. 3802(d))

§ 33.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer is deemed to be a request for hearing.

(b) In the answer, the defendant—
(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 33.11 for good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

(Authority: 31 U.S.C. 3803(d)(2), 3809)

§ 33.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 33.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 33.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if those facts establish liability under § 33.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision becomes final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant

from filing an answer, the initial decision must be stayed pending the ALJ's decision on the motion.

(f) If, on such a motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision under paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 33.38.

(h) The defendant may appeal to the Department head the decision denying a motion to reopen by filing a notice of appeal with the Department head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal stays the initial decision until the Department head decides the issue.

(i) If the defendant files a timely notice of appeal with the Department head, the ALJ shall forward the record of the proceeding to the Department head.

(j) The Department head decides expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Department head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Department head remands the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Department head decides that the defendant's failure to file a timely answer is not excused, the Department head reinstates the initial decision of the ALJ, which becomes final and binding upon the parties 30 days after the Department head issues that decision.

(Authority: 31 U.S.C. 3809)

§ 33.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

(Authority: 31 U.S.C. 3803(d)(2); 3809)

§ 33.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 33.8. At the same time, the ALJ shall send a copy of the notice to the representative for the Government.

(b) The notice must include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

(Authority: 31 U.S.C. 3803(g)(2)(A))

§ 33.13 Parties to the hearing.

(a) The parties to the hearing are the defendant and the Department.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

(Authority: 31 U.S.C. 3803(g)(2))

§ 33.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Department who takes part in investigating, preparing, or presenting a particular case may not, in that case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Department head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ may not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Department, including in the offices of either the investigating official or the reviewing official.

(Authority: 31 U.S.C. 3809(l)(2))

§ 33.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

(Authority: 31 U.S.C. 3803(g)(1)(A))

§ 33.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. That motion must be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) The motion and affidavit must be filed promptly upon the party's discovery of reasons requiring disqualification, or the objections are deemed waived.

(d) The affidavit must state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of those facts. It must be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of the motion and affidavit, the ALJ shall not proceed further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case must be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Department head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

(Authority: 31 U.S.C. 3803(g)(2)(G))

§ 33.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative (as defined in § 33.2);

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery under § 33.21;

(d) Agree to stipulations of fact or law, which must be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(Authority: 31 U.S.C. 3803(g)(2)(E), (F), (3)(B)(iii))

§ 33.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Disqualify a non-attorney representative (designated as described in the § 33.2 definitions of "representative") if the ALJ determines that the representative is incapable of rendering reasonably effective assistance;

(3) Continue or recess the hearing in whole or in part for a reasonable period of time;

(4) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(5) Administer oaths and affirmations;

(6) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(7) Rule on motions and other procedural matters;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, rule on, exclude, or limit evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Upon motion of a party, decide cases, in whole or in part, by summary judgment if there is no disputed issue of material fact;

(14) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(15) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

(Authority: 31 U.S.C. 3803(g))

§ 33.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues.

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement.

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents.

(4) Whether the parties can agree to submission of the case on a stipulated record.

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument.

(6) Limitation of the number of witnesses.

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits.

(8) Discovery.

(9) The time and place for the hearing.

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

(Authority: 31 U.S.C. 3803(g))

§ 33.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 33.4(b) are based, unless those documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of the documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 33.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 33.9.

(Authority: 31 U.S.C. 3803(g)(3)(B)(ii), 3803(e))

§ 33.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying.

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact.

(3) Written interrogatories.

(4) Depositions.

(b) For the purpose of this section and §§ 33.22 and 33.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained in this part may be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion or a motion for protective order, or both, as provided in § 33.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable determination of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 33.24.

(Authority: 31 U.S.C. 3803(a)(3)(B)(ii))

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena must specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 33.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking a verbatim transcript of the deposition, which the party shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

(Authority: 31 U.S.C. 3803(g)(3)(B)(ii))

§ 33.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 33.33(b). At the time these documents are exchanged, any party that is permitted by the ALJ to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, shall provide each other party with a copy of the specific pages of the transcript it intends to introduce.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided in paragraph (a) of this Section unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section are deemed to be authentic for the purpose of admissibility at the hearing.

(Authority: 31 U.S.C. 3803(g)(2))

§ 33.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. The request must specify any documents to be produced and must designate the witnesses and describe their address and location with sufficient particularity to permit the witnesses to be found.

(d) The subpoena must specify the time and place at which a witness is to

appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 33.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

(Authority: 31 U.S.C. 3804(b))

§ 33.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may take any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had.

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place.

(3) That the discovery may be had only through a method of discovery other than that requested.

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters.

(5) That the discovery be conducted with no one present except persons designated by the ALJ.

(6) That the contents of discovery or evidence be sealed.

(7) That a deposition after being sealed be opened only by order of the ALJ.

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way.

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

(Authority: 31 U.S.C. 3803(g)(3)(B)(ii))

§ 33.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District

Court. A check for witness fees and mileage must accompany the subpoena when served, except that if a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

(Authority: 31 U.S.C. 3804(b))

§ 33.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ must include an original and two copies.

(2) Every pleading and paper filed in the proceeding must contain a caption setting for the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper must be signed by, and must contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of the document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 33.8 shall be made by delivering a copy, or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. If a party is represented by a representative, service must be made upon the representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, is proof of service.

(Authority: 31 U.S.C. 3803(b)(3)(A))

§ 33.27 Computation of time.

(a) In computing any period of time under this part or in an order issued under this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) If the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government are excluded from the computation.

(c) If a document has been served or issued by placing it in the mail, an additional five days is added to the time permitted for any response.

(Authority: 31 U.S.C. 3809)

§ 33.28 Motions.

(a) Any application to the ALJ for an order or ruling must be by motion. Motions must state the relief sought, the authority relied upon, and the facts alleged, and must be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions must be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to the motion.

(d) The ALJ may not grant a written motion before the time for filing responses to the motion has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(Authority: 31 U.S.C. 3803(g)(3)(A))

§ 33.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section must reasonably relate to the severity and nature of the failure or misconduct.

(c) If a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon testimony relating to, the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with the request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.

(Authority: 31 U.S.C. 3803(g)(2))

§ 33.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 33.3 and, if so, the appropriate amount of the civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Department shall prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing must be open to the public unless otherwise ordered by the ALJ for good cause shown.

(Authority: 31 U.S.C. 3803 (f), (g)(2))

§ 33.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Department head, upon appeal, evaluate any circumstances that mitigate or aggravate the violation and articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty is imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Department head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements.

(2) The time period over which such claims or statements were made.

(3) The degree of the defendant's culpability with respect to the misconduct.

(4) The amount of money or the value of the property, services, or benefit falsely claimed.

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation.

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss.

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs.

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct.

(9) Whether the defendant attempted to conceal the misconduct.

(10) The degree to which the defendant has involved others in the misconduct or in concealing it.

(11) If the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude the misconduct.

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct.

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers.

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions.

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly.

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section may be construed to limit the ALJ or the Department head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

(Authority: 31 U.S.C. 3803(a)(2) (e), (f))

§ 33.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party must have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing must be held at the place and at the time ordered by the ALJ.

(Authority: 31 U.S.C. 3803(g)(4))

§ 33.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing must be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts must be exchanged as provided in § 33.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination must be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the party *pro se* or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an

individual employed by the Government engaged in assisting the representative for the Government.

(Authority: 31 U.S.C. 3803(g)(2)(E); 3809))

§ 33.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence if appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(3) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement are inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All Documents and other evidence offered or taken for the record must be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 33.24.

(Authority: 31 U.S.C. 3803(f)(g)(2)(E))

§ 33.35 The record.

(a) The hearing must be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(Authority: 31 U.S.C. 3803 (f))

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Department head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 33.24.

(Authority: 5 U.S.C. App. 2, section 11)

§ 33.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing these briefs, not to exceed 60 days from the date the parties receive the transcript of

the hearing or, if applicable, the stipulated record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

(Authority: 31 U.S.C. 3803 (g)(1)(2)(E))

§ 33.37 Initial decision.

(a) The ALJ shall issue an initial decision, based only on the record, that contains findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact must include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions of the complaint, violate § 33.3.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that the ALJ finds in the case, such as those described in § 33.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Department head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reasons for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Department head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

(Authority: 31 U.S.C. 3803(h)(i))

§ 33.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt is presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every motion under paragraph (a) of this section must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Responses to the motion are allowed only upon request to the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Department head in accordance with § 33.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Department head in accordance with § 33.39.

(Authority: 31 U.S.C. 3809)

§ 33.39 Appeal to Department head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal the decision to the Department head by filing a notice of appeal with the Department head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues a final decision. However, if another party files a motion for reconsideration under § 33.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Department head may extend the initial 30-day period for an additional 30 days if the defendant files with the Department head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Department head, and the time for filing motions for reconsideration under § 33.38 has expired, the ALJ shall forward the record of the proceeding to the Department head.

(d) A notice of appeal must be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Department head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Department head does not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Department head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present that evidence at the hearing, the Department head shall remand the matter to the ALJ for consideration of the additional evidence.

(j) The Department head affirms, reduces, reverses, compromises, remands, or settles any penalty or assessment, determined by the ALJ in any initial decision.

(Authority: 31 U.S.C. 3803(i))

(k) The Department head promptly serves each party to the appeal with a copy of the decision of the Department head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(Authority: 31 U.S.C. 3803(i)(2))

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Department head serves the defendant with a copy of the Department head's decision, a determination that a defendant is liable under § 33.3 is final and is not subject to judicial review.

(Authority: 31 U.S.C. 3805(a)(2))

§ 33.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Department head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related

to such claim or statement, the Department head stays the process immediately. The Department head orders the process resumed only upon receipt of the written authorization of the Attorney General.

(Authority: 31 U.S.C. 3803(b)(3))

§ 33.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Department head.

(b) No administrative stay is available following a final decision of the Department head.

(Authority: 31 U.S.C. 3809)

§ 33.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Department head imposing penalties or assessments under this part and specifies the procedures for the review.

(Authority: 31 U.S.C. 3805)

§ 33.43 Collection of civil penalties and assessments.

Section 3806 and 3806(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for those actions.

(Authority: 31 U.S.C. 3806(b))

§ 33.44 Right to administrative offset.

The amount of any penalty or assessment that has become final, or for which a judgment has been entered under § 33.42 or § 33.43, or any amount agreed upon in a compromise or settlement under § 33.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

(Authority: 31 U.S.C. 3806)

§ 33.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part are deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

(Authority: 31 U.S.C. 3807(b))

§ 33.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(Authority: 31 U.S.C. 3809)

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(Authority: 31 U.S.C. 3803(j))

(c) The Department head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 33.42 or during the pendency of any action to collect penalties and assessments under § 33.43.

(Authority: 31 U.S.C. 3803(i)(2)(C))

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 33.42 or of any action to recover penalties and assessments under 31 U.S.C. § 3806.

(Authority: 31 U.S.C. 3806(f))

(e) The investigating official may recommend settlement terms to the reviewing official, the Department head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Department head, or the Attorney General, as appropriate.

(Authority: 31 U.S.C. 3809)

(f) Any compromise or settlement must be in writing.

(Authority: 31 U.S.C. 3809)

§ 33.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 33.8 within six years after the date on which the claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 33.10(b) is deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

(Authority: 31 U.S.C. 3808)

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Proposed Rules

Federal Register

Vol. 53, No. 85

Tuesday, May 3, 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

Office of the Secretary

7 CFR Part 1

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations of the United States Department of Agriculture (Department) which implement the Equal Access To Justice Act (Act) (Pub. L. No. 96-481, as amended by Pub. L. No. 99-80, and Pub. L. No. 99-509). The Act provides for the award of attorney fees and other expenses to parties who prevail over the Federal government in certain administrative and court proceedings. These proposed revised rules, which reflect the changes in the law made by Pub. L. No. 99-80, and Pub. L. No. 99-509, establish procedures for the submission and consideration of applications for such awards.

DATE: Comments must be received on or before June 2, 1988.

ADDRESS: Interested persons may submit written comments to: Kenneth E. Cohen, Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447-5565.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, USDA (202) 447-6035.

SUPPLEMENTARY INFORMATION: These proposed revised rules are based upon the revised model rules issued by the Administrative Conference of the United States on May 6, 1986, and except for modifications necessary to adapt them to the use of this Department and conform them to the provisions of the Department Uniform Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR 1.130 *et seq.*), the

revised model rules have been proposed for adoption with only a few significant changes. In some provisions, the language of the revised model rules remained the same as that in the original model rules. However, the Department had not adopted the original model rules language when it promulgated its original rules. The Department now proposes to use the language of the revised model rules in most instances because it conveys more clearly the purpose of, and better implements, the Act. A synopsis of significant proposed changes follows. Unless otherwise indicated, all proposed amendments conform to the language of the revised model rules.

Section 1.180, "Definitions," would be amended to add definitions of "Adjudicative Officer," "Agency," "Days," and "Department."

Section 1.181, "Purpose of these rules," would be amended to delete the words "in the proceeding" where that phrase modifies the Department position.

Section 1.182, "When the Act applies," would be amended to reflect the new dates of application. It is proposed to include a provision making proceedings subject to Chapter 38 of title 31, United States Code, relating to administrative remedies for false claims and statements, effective October 21, 1986, the date of enactment of Pub. L. No. 99-509.

Section 1.183, "Proceedings covered," paragraph (a), would be amended by adding proceedings under the Contract Disputes Act of 1978 (41 U.S.C. 605) as adversary adjudications covered by the Act. Language excepting such proceedings would be deleted. It would also be amended to include the Animal Quarantine Act and the Plant Quarantine Act to the list of proceedings covered as adversary adjudications. The two acts were inadvertently omitted when the regulations were originally published. In addition, pursuant to Pub. L. No. 99-509, hearings conducted pursuant to Chapter 38 of title 31, United States Code would be added as an adversary adjudication covered by the Act. A new paragraph (b) is proposed to be added regarding the failure of the Department to list a particular type of adjudication. The proposed provision would allow a party to file an application, where the proceeding is not listed in the section, and thereby raising

the issue of whether the proceeding is covered. Paragraph (b) appeared in the original model rules, but was omitted from the original Department rules. Former paragraph (b) would be redesignated paragraph (c).

Section 1.184, "Eligibility of applicants," would be amended to reflect the new net worth figures for individuals, \$2 million, and corporations, \$7 million, and to add "unit of local government" as a potential eligible applicant.

Section 1.185, "Standards for awards," would be amended to clarify the meaning of the "position of the agency." In accordance with the model rules, language permitting avoidance of an award by showing reasonableness has been proposed for deletion.

Section 1.186, "Allowable fees and expenses," would be amended to conform to the revised model rules to provide more detail on the basis of awards.

A new § 1.187, "Rulemaking on maximum rates for attorney fees," is proposed to be added. The new section would provide that, if warranted by increased cost of living or special circumstances, the Department may adopt regulations providing that attorney fees may be awarded at a rate higher than \$75 per hour. Any such rulemaking would be pursuant to informal rulemaking procedures under the Administrative Procedure Act. It also provides that any person may petition for such rulemaking in accordance with the regulations at 7 CFR 1.28. This provision appeared in the original model rules and is proposed to be added to conform to the revised model rules.

Current § 1.187, "Delegations of authority," is proposed to be redesignated as § 1.189. It is proposed to amend the section to note specifically that the Board of Contract Appeals is authorized by statute to take final action in proceedings covered by § 1.183(a)(1)(ii).

A new § 1.188, "Award against other agencies," is proposed to be added. The new provision would allow a prevailing party to receive an award or portion of the award where it prevails over another agency of the United States participating in a proceeding before the Department. This provision appeared in the original model rules and is proposed

to be added to conform to the revised model rules.

Current § 1.188, "Contents of application," would be redesignated § 1.190, and would be amended to delete the words "in the proceeding" where that phrase modifies the Department position. Paragraph (b) is proposed to be amended to substitute the new net worth figures of \$2 million for individuals, and \$7 million for corporations.

Current § 1.189, "Net worth exhibit," would be redesignated as § 1.191, and paragraph (b), regarding an applicant's objection to disclosures of the net worth exhibit, would be amended. Provisions requiring an applicant to demonstrate why public disclosure would adversely affect the applicant and why disclosure is not in the public interest have been proposed for deletion. The Department does not believe it is necessary to put an additional burden on the applicant over and above that provided for under the provisions of the Freedom of Information Act (5 U.S.C. 552).

Current § 1.190, "Documentation of fees and expenses," is proposed for redesignation as § 1.192, and as in the original rules, the requirements for documentation are set out in greater detail than in the revised model rules. We believe this detail will expedite disposition of applications. Paragraph (d) would be amended to clarify that the adjudicative officer may require provision of information substantiating any fees, as well as expenses. A further amendment would make the procedures of § 1.199 applicable to the provision of this information.

Current § 1.191, "Time for filing application," is proposed for redesignation as § 1.193. Paragraph (a) would be amended to allow filing of an application whenever an applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding. This broadening of filing times conforms to both the original and revised model rules. Paragraph (c) would be redesignated paragraph (b) and amended to simplify the meaning of "final disposition." Paragraph (b) would be redesignated paragraph (c) and amended to specify that no decision on a fee application can be made where the United States has appealed the underlying merits to a court.

Current § 1.192, "Filing and service of documents," is proposed to be redesignated as § 1.194.

Current § 1.193, "Answer to application," would be redesignated as § 1.195 and amended to provide that failure of agency counsel to file an answer in the absence of an extension

of time for filing or a statement of intent to negotiate, may be treated as consent to the award requested. A further amendment would require a statement of intent to negotiate to be filed jointly by the applicant and agency counsel. These amendments would conform the Department rules to the revised model rules.

Current §§ 1.194 through 1.196 would be redesignated as §§ 1.196 through 1.198, respectively.

Current § 1.197, "Further proceedings," would be redesignated as § 1.199 and amended to clarify the circumstances under which "pertinent discovery or an evidentiary hearing" is appropriate. Amendments to the Act provide that substantial justification determinations can be made only on the basis of the administrative record made in the adversary adjudication for which the fees are sought.

Current § 1.198, "Decision," would be redesignated as § 1.200 and amended to include a provision that would require the adjudicative officer to allocate fee awards among the agencies involved where an award is sought against more than one agency. Another amendment would clarify the requirement that the adjudicative officer must make "findings on" whether the Department position was substantially justified, whether there was undue protraction of the proceedings by the applicant, or whether special circumstances make an award unjust. This proposed amendment conforms to provisions in the original and revised model rules which were not included in the original Department rules.

Current §§ 1.199 through 1.201, would be redesignated as §§ 1.201 through 1.203, respectively.

References to "Judge" in §§ 1.184, 1.186, 1.191, 1.192, 1.195, 1.197, 1.199, and 1.200, would be replaced by references to "adjudicative officer." This proposed change was necessitated in part by the amendment of the Act to provide specifically for proceedings under the Contract Disputes Act of 1978. The definition of "judge" in 7 CFR 1.132, incorporated by reference by § 1.180(a), was too restrictive.

This proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of \$100 million or more.

In addition, it has been determined that these proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

PART 1—[AMENDED]

Accordingly, it is proposed to revise 7 CFR, Subtitle A, Part 1, Subpart J to read as follows:

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

General Provisions

- | | |
|-------|--|
| Sec. | |
| 1.180 | Definitions. |
| 1.181 | Purpose of these rules. |
| 1.182 | When the Act applies. |
| 1.183 | Proceedings covered. |
| 1.184 | Eligibility of applicants. |
| 1.185 | Standards for awards. |
| 1.186 | Allowable fees and expenses. |
| 1.187 | Rulemaking on maximum rates for attorney fees. |
| 1.188 | Awards against other agencies. |
| 1.189 | Delegations of authority. |

Information Required From Applicants

- | | |
|-------|-------------------------------------|
| 1.190 | Contents of application. |
| 1.191 | Net worth exhibit. |
| 1.192 | Documentation of fees and expenses. |
| 1.193 | Time for filing application. |

Procedures for Considering Applications

- | | |
|-------|----------------------------------|
| 1.194 | Filing and service of documents. |
| 1.195 | Answer to application. |
| 1.196 | Reply. |
| 1.197 | Comments by other parties. |
| 1.198 | Settlement. |
| 1.199 | Further proceedings. |
| 1.200 | Decision. |
| 1.201 | Department review. |
| 1.202 | Judicial review. |
| 1.203 | Payment of award. |

Authority: 5 U.S.C. 504(c)(1).

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

General Provisions

§ 1.180 Definitions.

(a) The definitions contained in Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings (§ 1.132 of this part) are incorporated into and made applicable to this subpart.

(b) "Adjudicative Officer" means an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by the Act.

(c) "Agency" means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) "Agency counsel" means the attorney from the Office of the General

Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) "Days" means calendar days.

(f) "Department" means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Department will use to make awards.

§ 1.182 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before this Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which shall be effective on or after October 21, 1986. It also applies to any adversary adjudication commenced on or after October 1, 1984, and disposed of finally before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1.183 Proceedings covered.

(a)(1) These rules apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by this Department under 5 U.S.C. 554 in which the position of this Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding.

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which this Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The proceedings covered are adversary adjudications under the statutory provisions listed below.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Quarantine Act (21 U.S.C. 104)
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Plant Quarantine Act (7 U.S.C. 163)
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of this Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under

the Act, the applicant must be a prevailing party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in §§ 1.181 through 1.186 and in §§ 1.190 through 1.193 of this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than \$7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated. Provided, that for purposes of eligibility in proceedings covered by § 1.183(a)(1)(ii) of this part, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant

directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1.185 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the position of the Department was substantially justified is on the agency counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed \$75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent,

or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), this Department may adopt regulations providing that attorney fees may be awarded at a rate higher than \$75 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with this Department a petition for rulemaking to increase the maximum rate for attorney fees in accordance with § 1.28 of this part. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It also should explain fully the reasons why the higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 1.188 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate

portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies. With respect to proceedings covered under § 1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

Information Required From Applicants

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of this Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation. Unless the applicant is an individual, the application also shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes this Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or

attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9). The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures of this Department under the Freedom of Information Act (§§ 1.1 through 1.23 of this part).

§ 1.192 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering

report, test, project, or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation also shall include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 1.199 of this part.

§ 1.193 Time for filing application.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after final disposition of the proceeding by the Department.

(b) For the purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case

have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1.194 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in § 1.191 of this part for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in § 1.147 of this part are incorporated into and made applicable to this subpart, except that the statutory 30 day time limit on filing the application as set out in § 1.193 of this part may not be extended.

§ 1.195 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.196 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.197 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate

further in proceedings on the application, unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1.198 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1.199 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall identify specifically the information sought or the disputed issues, and shall explain specifically why the additional proceedings are necessary to resolve the issues.

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130 through 1.151 of this part, except that any hearing in a proceeding covered by § 1.183(a)(1)(ii) of this part shall be conducted pursuant to Rules 17 through 25 of the Board of Contract Appeals contained in § 24.21 of this title.

§ 1.200 Decision.

The adjudicative officer or Board of Contract Appeals shall issue an initial decision on the application as expeditiously as possible after

completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision also shall include, if at issue, findings on whether the position of the Department was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.201 Department review.

(a) Except with respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145 (b) through (i) and 1.146(b) of this part.

(b) With respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in § 24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

§ 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within

60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Date: April 4, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-9618 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would make reserve supply plants subject to minimum shipping standards during the months of August through December in order to be pool plants under the Upper Midwest Federal milk order. The plants would be required to ship to pool distributing plants 5 percent of the total milk production received from dairy farmers or diverted by the plant operator during each month of August and December, and 8 percent of such receipts during each of the months of September, October and November in order to maintain their pool status. Two or more reserve supply plants would be allowed to have their receipts and shipments to pool plants considered on a combined, or unit, basis to meet the minimum shipping requirements or a "call" by the market administrator for milk supplies needed for Class I, or fluid, use. However, each handler in such a unit would have to ship at least 5 percent of its receipts on an individual basis during one month of any August through December period in order to qualify for pool status during the month of December.

A proposal to reduce the current requirement that a daily average of at least 25,000 pounds of Grade A milk from dairy farmers be received at a pool reserve supply plant is denied.

The decision is based on the record of a public hearing held July 7-8, 1987, in Bloomington, Minnesota. The proposed changes were submitted and supported by six cooperative associations that represent a substantial proportion of producers who supply milk to the market. The changes are necessary to

assure an adequate supply of milk in an orderly manner for Class I (fluid) use in the Upper Midwest marketing area. Cooperative associations will be polled to determine whether producers favor the issuance of the amended order.

Other issues considered at the hearing were whether the operator of one or more distributing plants and one or more soft-products (cream items, cottage cheese and yogurt but excluding ice cream) plants located within the marketing area should be allowed to have such plants considered as one plant or unit, for pooling purposes, and whether the proposals considered at the hearing should be handled in an expedited manner. A separate decision on those issues was issued September 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), 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. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Partial Decision: Issued September 2, 1987; published September 9, 1987 (52 FR 33943).

Order amending the Order: Issued September 28, 1987; published October 2, 1987 (52 FR 36909).

Recommended Decision: Issued January 12, 1988; published January 19, 1988 (53 FR 1360).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Midwest 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 (7 CFR Part 900), at Bloomington, Minnesota, on July 7-8, 1987. Notice of such hearing was issued on June 19, 1987, and published June 25, 1987 (52 FR 23843).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service, on January 12, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Three paragraphs are added following paragraph 38.
2. Four paragraphs are added following paragraph 40.
3. Four paragraphs are added following paragraph 46.
4. Two paragraphs are added following paragraph 49.

The material issue on the record of the hearing that is dealt with in this decision is whether reserve supply plants should be required to ship minimum percentages of their producer milk receipts to pool distributing plants in order to qualify for pool plant status under the order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof: *Reserve supply plant shipping standards.*

The Upper Midwest order should be changed to require pool reserve supply plants to ship a minimum percentage of their receipts to pool distributing plants during the months of August through December. Handlers would be allowed to have their receipts and shipments considered as a unit for purposes of determining whether pooling standards have been met. However, each plant in a unit would have to deliver at least 5 percent of its producer receipts to pool distributing plants during one month of the August through December period in order to qualify for pooling during the month of December. At the present time, reserve supply plants are subject to no minimum shipping requirements to qualify for pooling unless the market administrator finds that milk supplies for Class I use are needed at pool distributing plants and issues a "call" for such supplies.

The change was proposed by six cooperative associations that represent

a majority of the producers supplying milk to the Upper Midwest market. The cooperative association are Land O'Lakes, Inc. (LOL), Mid-America Dairymen, Inc. (Mid-Am), Cass-Clay Creamery, Inc., Wisconsin Dairies Cooperative, First District Association and Associated Milk Producers, Inc. (AMPI). Representatives of five of the proponents and a witness for Marigold Foods, the operator of three fluid milk plants under the order, testified in favor of the proposal. The proposed changes would require reserve supply plants to ship a minimum of 5 percent of their total supply of Grade A producer milk to pool distributing plants during the months of August and December, and 8 percent during September through November, in order to be pool plants. Under the proposal, reserve supply plants that meet the shipping standards during the months of August through December would continue to be pooled for the following months of January through July. The proposal would allow two or more reserve supply plants operated by the same handler to be pooled as a unit by having their receipts and shipments to distributing plants considered on a combined basis. Under the proposal, the minimum shipping standards could be reduced on a temporary basis by the Director of the Dairy Division. The present provision allowing the market administrator to issue a "call" for additional needed supplies of milk for Class I use would remain in the order. Proponents' proposal would reduce the current requirement that a reserve supply plant assemble at least a daily average milk supply of 25,000 pounds to a 25,000-pound requirement on at least 2 consecutive days of each month. Adoption of the proposal was opposed by witnesses testifying on behalf of two cooperative associations: Farmers Union Milk Marketing Cooperative (Farmers Union) and National Farmers Organization (NFO); and on behalf of Kraft, Inc., Universal Foods, and the Trade Association of Proprietary Plants (TAPP).

The LOL witness testified that LOL operates eight reserve supply plants and a distributing plant under the order, and supplies a significant part of the milk needed for Class I use at two other pool distributing plants. The witness stated that distributing plants in the Upper Midwest marketing area have experienced continuing difficulty in securing dependable supplies of milk in the absence of a "call" from the market administrator requiring reserve supply plants to ship milk for fluid needs. He attributed the reluctance of reserve

supply plant operators to ship milk to distributing plants to the substantial costs incurred in supplying milk for Class I use. The witness stated that when a "call" is issued, plant operators can be assured that most of their competitors are sharing equitably in the cost of supplying Class I milk to the market, but described the issuance of a "call" for milk as a procedure too cumbersome and defective to be used to secure milk supplies for the fluid needs of the market on a regular basis.

The witness explained that, in shipping milk to distributing plants for Class I use, reserve supply plant operators incur additional costs of running duplicate Grade A and Grade B farm bulk pickup routes instead of operating one commingled route, and hauling milk from supply plants to distributing plants. He estimated that such costs would be about 50 cents per hundredweight for milk hauled 75 miles. In addition, the witness cited the cost of releasing Grade A milk for Class I use from a supply plant that is also a manufacturing plant. He stated that under-utilization of a manufacturing plant's capacity because of the necessity of shipping milk for Class I use may cost \$10,000 per day, or range from \$1.25-\$1.43 per hundredweight of Class I milk shipped. The witness pointed out that, in view of the unreimbursed costs of shipping Class I milk to distributing plants, plant operators that do not ship enjoy a competitive advantage over those that do. He stated that it is more expensive for supply plant operators to remove milk from their manufacturing operations during the fall, when manufacturing plants are operating at below-capacity levels because of lower levels of milk production, than at any other time of the year.

The LOL witness testified that the only factors that serve to offset the costs of releasing milk for Class I use are location adjustments provided under the order and over-order premiums. He said that the location adjustment on most reserve supply plants is only 6 cents, or a small fraction of the cost of supplying milk for Class I use, and that the premium customarily charged in addition to the order price for milk delivered for Class I use during the fall months is 60 cents per hundredweight. The witness stated that the economic incentives available to reimburse reserve supply plant operators for shipping Class I milk will cover the costs of such shipments only for those reserve supply plants located relatively near the market, and are, for the most part, inadequate to assure a large enough supply of milk for Class I use.

The witness testified that the threat of a "call" for Class I milk shipments by the market administrator under the present order has served as a shipping requirement for many years, but that its effectiveness has diminished recently in view of declining milk supplies. He stated that the "call" provision had to be used for three consecutive months in the fall of 1986 in order to obtain an adequate supply of Class I milk for distributing plants. The witness characterized use of the "call" as assuring that most competitors are sharing equitably in the cost of supplying Class I milk.

According to the LOL witness, all reserve supply plants that share in the market's Class I returns by sharing in the order's blend price also should share in the burden of supplying Class I milk to fluid milk plants. The witness asserted that mandatory shipping standards are the only reasonable mechanism to insure that all reserve supply plants ship Class I milk at a minimal level. He described minimum shipping requirements as eliminating doubt about whether it will be necessary for reserve supply plants to ship Class I milk to distributing plants. Under the present order provisions, he explained, there is uncertainty on the part of reserve supply plant operators as to whether they will be required to ship milk for Class I use until a call is actually announced, usually about the first day of the month for which deliveries are to be required. The witness further stated that mandatory shipping percentages will encourage reserve supply plant operators to make advance arrangements to supply Class I customers on a regular basis rather than having to find a Class I outlet after a call is announced. He indicated that minimum shipping requirements would encourage reserve supply plant operators to more closely monitor quality discipline at producers' farms and to assure that their plants are capable of delivering high-quality milk to distributing plants. The witness stated that planning and orderly operation of both manufacturing plants and distributing plants, and more orderly movement of milk from production areas to the marketplace, would be enhanced by requiring the timing and volume of milk movements to be established well in advance for the purpose of meeting the order's minimum shipping standards.

The LOL witness supported the cooperatives' proposed 5 percent and 8 percent shipping requirements on the basis that these percentages would not compel reserve supply plants to ship

more milk than would be needed at distributing plants, but would be near the actual volume of milk needed from reserve supply plants. The witness stated that approximately half of the milk supplies received at pool distributing plants during August through December 1986 originated at supply and reserve supply plants, and that the total milk supplies from pool sources represented about 17 percent of the producer milk pooled under the order. The witness supplied data indicating that the actual shipments to distributing plants from supply and reserve supply plants during 1986 exceeded the mandatory shipping percentages proposed by proponents. He noted that if the proposed percentage shipping requirements prove to be inadequate or excessive in the future, the market administrator would retain the authority to issue a "call" for increased shipments, and the Director of the Dairy Division would be authorized to reduce the level of shipments required. The LOL witness testified that the months of August through December are the time of year when Class I requirements are greatest, while the opportunity cost to manufacturing operations of supplying milk for Class I use is also greatest. He stated that adoption of minimum performance standards for all pool participants would ease the market supply problems currently experienced during the fall months.

The witness testified in favor of proponents' proposal to require that a reserve supply plant receive at least 25,000 pounds of milk on only two consecutive days during the month instead of the present requirement that such a plant receive a daily average of at least 25,000 pounds of milk. He stated that the original intent of the present provision was to assure that a reserve supply plant operator would have the capability of putting together a tankerload of milk in two days for shipment to distributing plants. According to the witness, the proposed change would continue the original intent, but would allow some savings in the costs of operating reserve supply plants.

A witness representing Wisconsin Dairies stated that the cooperative operates five reserve supply plants under the order. He testified that the Upper Midwest order was designed to further orderly marketing, and had done so quite well for ten years with the "call" provision used only once. However, he stated, use of the "call" provision for three consecutive months during the fall of 1986 was not

conducive to orderly marketing. The witness testified that Wisconsin Dairies was already shipping above any anticipated "call" percentage in the fall of 1986 and felt that volunteering to ship additional volumes of milk was not a sound business practice when some reserve supply plant operators were unwilling to serve the fluid milk market. He emphasized that since all reserve supply plants share in the market's Class I returns it is only fair that all should share in serving the fluid milk needs of the market.

A witness testifying on behalf of AMPI stated that AMPI operates eight reserve supply plants under the Upper Midwest order, and supplies milk to eight distributing plants. The witness testified that prior to September 1986 the threat that the "call" provision would be implemented worked well to assure an adequate supply of milk for Class I use. He stated that some suppliers shipped additional milk voluntarily while others gave up milk reluctantly in response to the market administrator's indication that a "call" would be issued if needed Class I milk supplies were not supplied to bottlers. The witness said that suppliers seem reluctant to ship Class I milk under the current marketing conditions of declining production because of the value of additional milk to manufacturing plants, especially during the fall months of the year. He attributed the necessity of using the "call" provision for three consecutive months in 1986 to the common understanding that some suppliers, who are also competitors for producer milk, were shipping little or no milk to distributing plants. He described three months of operating under the "call" provision as having three months of shipping requirements but not knowing what the required percentage would be until each month started.

The AMPI witness compared the percentages required by operation of the "call" provision in September-November 1986 with the proposed percentage requirements and determined that if the proposed requirements had been in effect in the fall of 1986, the small amount of milk in excess of the proposed percentages that would have been required for Class I use could have been obtained easily by negotiations between distributing plant operators and the operators of reserve supply plants. The witness described marketing conditions in the presence of "calls" for three consecutive months as characterized by uncertainty and lack of planning between suppliers and customers, leading to disorderly marketing conditions. He testified that

he understood the proposal would allow the Director to increase, as well as decrease, the shipping percentage required of reserve supply plants, or, in a situation that would not allow time for such action by the Director, to allow the market administrator to issue a "call" for additional shipments.

A witness for Mid-Am testified that the association operates five reserve supply plants under the Upper Midwest order. The witness stated that one of the primary purposes of the Federal order is to assure an adequate supply of milk for distributing plants and consumers. He explained that as the amount of milk pooled under the Federal order increases, a smaller percentage of the total volume is needed to supply the market's fluid needs. As a result, he said, an increasing percentage of producer milk is used in manufactured products and handlers become accustomed to using producer milk in their manufacturing plants. The witness stated that the economic benefits to handlers of not shipping milk to distributing plants interfere with the orderly flow of milk for Class I use. However, he asserted, any organization participating in the blend price generated by Class I sales should accept the burden of supplying those sales, even if that burden includes shipping milk two or three hundred miles for Class I use. He observed that the economic incentives provided both under the order and outside the order, such as over-order prices, are insufficient to pull milk away from use in manufacturing plants. At the same time, he said, the order's shipping provisions do not push the milk out of the reserve supply plants unless a "call" is issued. The witness concluded that the "call" provision was not intended to be used on a frequent basis, and that mandatory shipping requirements are the appropriate means of supplying the fluid needs of the market.

The Mid-Am witness suggested that the proposed mandatory shipping standards be allowed to be met by units formed by two or more cooperative associations in addition to the units to be permitted of multiple plants operated by one handler. He opposed allowing proprietary handlers to form units with cooperative associations or with other proprietary handlers. He stated that the benefits of efficiencies resulting from the activities of a unit of cooperative associations would accrue to their dairy farmer members, but that efficiencies achieved by a unit of proprietary handlers may not be passed back to dairy farmers. Mid-Am's proposed modification of the proposed shipping

requirements was supported by the witness for LOL who stated that a unit pooling provision for cooperative associations would accustom the associations to working together to increase their efficiency and effectiveness in supplying milk to the market.

A witness for Cass-Clay Creamery, Inc., testified that Cass-Clay operates three distributing plants, one reserve supply plant and three supply plants, all pooled under the Upper Midwest order, and four nonpool manufacturing plants. The witness stated that milk supplies in the vicinity of its Fargo, North Dakota, fluid milk plant have been hard to obtain during the fall months of the last several years. He explained that Fargo was not within the designated area delineated by the market administrator for the "calls" issued for Class I milk shipments in September through November 1986, and that procurement of milk supplies for the Fargo plant was not, therefore, assisted by announcement of a "call." In fact, the witness testified, the two or three reserve supply plants located near the Fargo area from which milk might be available do not, to his knowledge, have Interstate Milk Shippers' (IMS) approval. He stated that without IMS approval such milk supplies would be of no use to the Cass-Clay distributing plant. The witness argued that if the supply of milk continues to decrease, not enough will be available for Class I use. He stated that milk must move to fluid outlets as a result of either price incentives or performance requirements, and concluded that the proposed shipping standards would alleviate the problem of inadequate price incentives and make the marketing of Class I milk more equitable for all market participants.

A witness representing Marigold Foods, a proprietary handler that is a large purchaser of Grade A milk in the Upper Midwest market, testified that adoption of a minimum shipping requirement for reserve supply plants would assure all milk suppliers that producer groups sharing in the order's blend price have performed some of the responsibility of delivering milk to the Class I market. He explained that reserve supply plants are able to pay producers the Federal order blend price for all of their milk, whether any of it is used in Class I or not, and therefore are able to compete with other handlers for a supply of milk that will enable them to operate their manufacturing plants at an optimal level. He stated that required shipping percentages would establish supply patterns by all suppliers

participating in the pool and may create a climate that would eliminate the need for any future "calls."

The Marigold witness testified that in July 1986 Marigold began to try to secure an adequate supply of milk for the fall period beginning with September 1, 1986. He stated that it quickly became apparent that those suppliers who already supplied Marigold were not going to increase their shipments, and that suppliers who did not already supply Marigold were not going to start doing so. The witness testified that he had notified the market administrator of his difficulty in obtaining milk supplies about August 1, and the market administrator started the procedure required to issue a "call" at that time. After the "call" for September 1986 was issued, he continued, the procurement situation did not improve greatly because suppliers would ship milk to Marigold's plants only until they had fulfilled the "call" requirements. He stated that much of his time in the last half of 1986 was spent in trying to keep Marigold's plants operating, even though "calls" were also issued for October and November.

The witness for Marigold testified that Marigold would like to be able to offer a high enough price for its milk supply so that its plants could be assured of an adequate supply of milk on a year-round basis. However, he pointed out, Marigold cannot pay more than the prevailing price in the market for its milk supply and still be able to compete for sales with handlers paying less. The witness attributed suppliers' reluctance to ship milk for Class I use to their desire to keep their milk supplies for their own manufacturing plants.

A witness representing Kraft, Inc., testified in opposition to the proposed mandatory shipping standards. He explained that Kraft operates a reserve supply plant under the Upper Midwest order, is a regular supplier of milk to the Class I market, and ships to distributing plants a percentage of its total supply approximately equal to the market's percentage of Class I use. The witness asserted that the current provisions of the order are flexible enough to adjust to the changing needs of the market while minimizing regulatory intervention. He stated that use of the call provision during the fall of 1986 accomplished the purpose for which it was intended, of supplying needed milk to pool distributing plants for Class I use. Although he acknowledged the inequity between reserve supply plants that ship milk to the fluid market and those that do not, the witness asserted Kraft's opposition to mandatory percentage

requirements. He described mandatory shipping standards as inflexible and stated that their adoption may result in requiring handlers to ship milk to the fluid market in excess of Class I needs.

In the event mandatory shipping requirements are adopted in spite of Kraft's opposition, the Kraft witness suggested modifications to the proposed amendments. First, he stated, the Director of the Dairy Division should have the discretion to reduce the required shipping percentages to zero instead of by 5 percent, as proposed by proponents. He argued that the reason for allowing the Director to adjust shipping percentages is to save the time and expense of a Federal order hearing proceeding, and that there is no point in limiting the Director's discretion for the three months during which 8 percent of a reserve supply plant's receipts are required to be shipped to distributing plants. In addition to allowing a multi-plant handler to qualify more than one reserve supply plant as a unit, as proposed by proponents, the Kraft witness advocated that any group of handlers be allowed to consider their reserve supply plants as a unit for the purpose of meeting the minimum shipping requirements. He stated that allowing all handlers to form such units would maximize the transportation efficiencies available to meet the Class I needs of the market, and would help defray the cost of complying with mandatory shipping percentages for small or poorly-located handlers. Finally, the Kraft witness proposed a modification to the proposed provision that would protect a multiple-plant handler from losing pool status entirely if the percentage shipping requirements are not met. He suggested that when such a handler files a request with the market administrator for pool status for its reserve supply plants, the request should describe the sequence in which plants would be excluded from the unit in the event minimum performance standards are not met.

A witness representing Farmers Union Milk Marketing Cooperative (FUMMC) also opposed the adoption of mandatory shipping requirements. He described such requirements as unnecessary and undesirable in that the percentage of producer milk needed for Class I use in the Upper Midwest marketing area is the lowest in the U.S., averaging only about 13 percent. According to the FUMMC witness, the cause of the problem in getting milk to distributing plants is the unreasonably low handling charges established by the principal cooperatives in the market. He charged that proponent cooperatives own

interests in eight distributing plants that distribute milk in the Upper Midwest order area, and that, having kept the cost of obtaining milk supplies low to themselves, they now want the government to require other handlers to give up profitable sales in order to supply milk for Class I use at a loss. The witness also noted that some of proponent cooperatives sell large volumes of manufactured dairy products to the government on a year-round basis. He stated that any mandatory shipping standards should require that milk be used for sales to distributing plants rather than to the Commodity Credit Corporation.

The FUMMC witness testified that proponents favor mandatory shipping percentages in order to assure that handling charges on milk supplied to the fluid market remain at their present level of 50 or 60 cents per hundredweight. He attributed proponents' motive for keeping handling charges low to their desire for making it impossible for other organizations marketing producers' milk to compete for producer milk supplies. The witness stated that four proprietary handlers, three of them small family-owned businesses, had lost their pool status as a result of their failure to meet the shipping percentages required by the "calls" issued during the fall months of 1986. He pointed out that mandatory shipping requirements could be expected to have the same effect on other handlers in similar positions. The FUMMC witness testified that if mandatory shipping requirements are adopted, he would support a provision that would allow proprietary handlers, as well as cooperative associations, to form units for the purpose of meeting the required shipping percentages.

A witness testifying on behalf of National Farmers Organization (NFO) opposed the proposal to require a minimum level of shipments from reserve supply plants to distributing plants. He stated that the present pooling provisions of the Upper Midwest order were designed to accommodate the pooling of an already abundant supply of Grade A milk and the milk of any Grade B producers who wish to upgrade to Grade A, and should continue to do so. The witness described the threat of implementation of the call provisions as the single most effective tool in aligning buyers and sellers, and stated that operating without using the call provision is in the best interests of the market. He explained that without either a "call" for Class I milk supplies or mandatory shipping percentages only milk that is needed for fluid use moves

to distributing plants. He observed that milk that is moved for fluid use comes from the closest and most economical sources. The witness said that the entire marketing area has never been included under a "call", but that the area from which shipments are required under a "call" has been large enough so that the burden of supplying the required milk for Class I use has never been borne too heavily by one organization. At the same time, he stated, the "call" area has never been large enough to require very distant milk to be moved or excess shipping costs to be incurred. The witness observed that 34 percent of the milk pooled under the order during December 1986 was produced within the area from which milk was "called" for Class I use during the fall months of 1986.

The NFO representative testified that if mandatory shipping standards were adopted, milk supplies very distant from the metropolitan area would be required to move uneconomically to distributing plants or lose pool status. He used as an example a supply of NFO milk located near Benoit, Wisconsin, that would have to be shipped over 200 miles to the nearest distributing plant at a cost of 72 cents per hundredweight for transportation. Another example cited by the witness was a proprietary reserve supply plant located in eastern North Dakota. According to the witness, the three distributing plants located closest to this proprietary handler are all cooperative-owned, and depend on their own members' milk supplies. As a result, he said, Minneapolis/St. Paul, at a distance of 368 miles from the handler, would be the likeliest market for any milk the handler would be required to ship. The witness stated that the transportation cost of such shipments would be \$1.29 per hundredweight. He said that requiring such shipments when more than ample supplies of milk are produced much closer to the market is not in the best interests of the market.

The NFO witness explained that as milk supplies have declined, handlers that have manufacturing operations are not willing to release greater supplies of milk to distributing plants without being adequately compensated for the costs they would incur as a result. The witness introduced data showing that the service charges received for milk supplied to distributing plants in Federal milk order areas surrounding the Upper Midwest are generally somewhat higher (by \$.28 to \$1.11) than service charges paid by distributing plants in the Upper Midwest order area. He noted that some NFO milk produced within the Upper Midwest milkshed is delivered to pool

distributing plants in other Federal order areas and pooled under those orders because the service charges paid by the receiving handlers in those areas return much more money to the cooperative than do sales to Upper Midwest distributing plants.

The witness for NFO stated that the cooperative historically has supplied to distributing plants a higher percentage of its milk supply than the marketwide percentage of producer milk used in Class I, but will no longer ship milk from reserve supply plants without being able to recover direct transportation costs. The witness further warned that if mandatory shipping standards are adopted, NFO would seriously consider reducing its shipments of milk for Class I use to just above the required percentage instead of its current 27-percent level of performance. He predicted that the result of adoption of minimum shipping requirements would be to reduce service charges below their current inadequate level and to generate excessive costs of moving milk unnecessarily from reserve supply plants to distributing plants.

The witness expressed NFO's opposition to reducing the 25,000 pound per day average receipt requirement at reserve supply plants. He described the current standard as minimal, and stated that reducing it would serve no constructive purpose even though one NFO reserve supply plant had failed to be pooled as a result of falling below the required volume of receipts.

A witness testified in opposition to the proposal on behalf of Universal Foods, a proprietary manufacturing plant operator whose producers are pooled through Twin Town Cheese Factory, Inc. Twin Town Cheese Factory is a cheese manufacturing company that operates a reserve supply plant. The witness stated that milk for Class I use is supplied to Upper Midwest distributing plants from the Twin Town plant on a year-round basis at a level that exceeds the "call" percentages announced during the fall of 1986. He stated that in order to obtain an adequate supply of producer milk, Twin Town must pay producer premiums and hauling subsidies that result in milk costs that range from 80 cents to \$1.00 over the Federal order blend price. He noted that, given the cost of acquiring milk, supplying it to distributing plants at 50 cents over the Class I price is not economical. The witness also stated that one of the results of adopting mandatory shipping standards would be the reduction of the service charges currently collected for deliveries of milk to distributing plants.

A witness representing the Trade Association of Proprietary Plants (TAPP) testified in opposition to the proposed minimum shipping requirements. The witness said that the order's "call" provision has operated to assure an adequate supply of milk to handlers and consumers, making a minimum shipping percentage unnecessary. He explained that a required shipping percentage of 5 to 8 percent coupled with a provision allowing the percentage to be increased or decreased at the discretion of the Dairy Division Director is little different from the present "call" provision. He stated that the "calls" announced in the fall of 1986 involved most of the market area, and that the "call" provision could be applied on a marketwide basis to assure that it would affect all reserve supply plant operators equally.

The TAPP witness attributed the difficulty distributing plants experience in securing an adequate supply of milk to proponent cooperatives' failure to develop an organization and pricing policy outside of the Federal order to solve supply problems and develop equity between handlers and producers on an economically sound basis. He stated that the shipment of milk and organization of the market is the primary responsibility of cooperatives. The witness testified that cooperative associations should organize to establish over-order charges at a level that would be high enough to cover the full cost of supplying milk to the Class I market and thereby encourage milk shipments. Instead, he claimed, proponent cooperative associations have competed with each other to set over-order service charges low enough to maintain year-round sales of their members' milk to fluid handlers. He charged that cooperatives then use the "call" provision or minimum shipping requirement to force proprietary handlers to give up milk for fluid use at the time of year it is most profitable for handlers to keep milk supplies in their own manufacturing plants.

The TAPP representative characterized the proposal as contrary to the Regulatory Flexibility Act which, he said, protects small businesses from the adverse effects of government regulations. He stated that a minimum shipping percentage would have a greater impact on a small proprietary plant's operations. Such a plant, he said, may not be equipped to get involved in selling milk for fluid use. The witness described the operations of proponent cooperative associations as being more advantageous than those of small proprietary handlers in supplying the

market for Class I use. He said that proponents' milk supplies are located close to the market; are largely direct-delivered to distributing plants, resulting in lower handling costs; and are often pooled in multiple-plant operations, allowing more flexibility in handling. He cited the example of a small cheese plant operator who had decided to drop out of the pool during the fall months of 1986 when a "call" for milk supplies was announced, rather than ship the percentage required by the "call." In order to participate in the pool and be able to pay his producers the blend price during subsequent months, the witness said, the handler had to incur the expense of shipping a percentage of his receipts equivalent to the marketwide percentage of producer milk used in Class I during the same month of the previous year, and thereby qualify as a supply plant.

The witness for TAPP argued that distributing plants should pay whatever price is needed to obtain an adequate supply of milk for Class I use without any minimum shipping standards or "call" provisions to require handlers to ship milk for fluid use. Without such regulatory forcing of shipments, he said, over-order service charges will rise to cover the cost of shipping milk to distributing plants.

The Upper Midwest milk order should require that all reserve supply plants ship at least a minimum percentage of their receipts of producer milk to pool distributing plants. At the present time it is apparent that without a "call" requiring shipments to fluid milk plants many handlers avoid such shipments altogether.

A situation in which some reserve supply plant operators ship milk at levels well above the marketwide percentage of producer milk used in Class I, and other reserve supply plant operators do not ship milk at all is equitable to none of the market participants. According to the record testimony, handlers who supply milk for fluid use incur significantly greater costs than those who retain their milk supplies for manufacturing use. As a result, shipping handlers are disadvantaged with respect to their competitors, both in the cost of producing manufactured products and in their ability to attract an adequate supply of producer milk. Because handlers that carry the burden of supplying the fluid milk market have higher operating costs than other handlers, their ability to pay producers as much as non-shipping handlers pay is impaired, resulting in inequitable returns to producers. In addition, a distributing

plant operator who must pay more than the customary over-order service charges for some of the milk required to operate his plant is placed at a competitive disadvantage relative to other distributing plant operators who may be able to obtain adequate supplies at the customary price.

In order to participate in the marketwide pool, and thus subsidize their payments to producers with the Federal order blend price, reserve supply plant operators should demonstrate their willingness and ability to help supply milk for the higher-valued uses that generate the blend price. Testimony that some reserve supply plants are not approved or equipped to ship milk to distributing plants indicates that some handlers participating in the marketwide pool may not be capable of supplying milk for fluid use, even if they were willing. Although the cost of shipping Class I milk apparently exceeds the returns for such shipments, it would not be reasonable to allow handlers and producers that have neither the ability nor any intention to supply milk for Class I use to enjoy the benefits of participating in the marketwide pool, since a basic purpose of the order is to assure an adequate supply of milk for fluid use.

In addition to fostering equitable treatment under regulation, mandatory shipping standards would dispel any doubts handlers may have about whether they will be required to ship milk to distributing plants or not. Also, minimum shipping requirements will encourage establishment of regular supply relationships between reserve supply plant operators and distributing plants.

Opponents' arguments against adoption of minimum shipping percentages centered on the idea of efficiency. It is inefficient to move milk long distances for fluid use when there are closer-in supplies of milk available. However, one of the more significant costs of supplying the fluid market, according to both proponents and opponents, is the opportunity cost of milk removed from a manufacturing plant operating at less than full capacity to be delivered to a distributing plant. The "give-up" cost associated with shipping such milk falls as heavily on a handler located near Minneapolis/St. Paul as it does on a handler located in central North Dakota. The transportation cost of moving such milk, of course, would be greater for the North Dakota handler.

An additional argument by opponents was that minimum shipping

requirements would serve to reduce the already inadequate handling charges on shipments of Class I milk. However, opponents' data showed that handling charges effective in surrounding marketing areas, most of which are subject to required shipping percentages, are generally higher than in the Upper Midwest area. This data would seem to indicate that the presence of shipping requirements in an order does not necessarily have the effect of discouraging over-order handling charges.

Exceptions were filed on behalf of several of the interested persons who testified in opposition to the adoption of mandatory shipping standards, and by Frigo Cheese. The objections to mandatory shipping percentages were reiterative of the arguments made at the hearing and considered in the recommended decision. The arguments for and against the adoption of such requirements illustrate the difficulty of balancing equity and efficiency under the order. Although marketing efficiency has been, and still is, a principal goal of Federal order pooling standards it should not be pursued to the point of completely abandoning any concern over the question of equity between milk handlers and between producers. Those opposed to the minimal shipping requirements adopted in this decision appear to advocate a situation in which nearby supplies of cooperative members' milk are expected to satisfy all of the market's demand for fluid milk while any dairy farmers within several hundred miles are entitled to share in the returns from the fluid market without ever having to ship milk to it.

As explained above, a cooperative association's opportunity cost of supplying milk to distributing plants is just as great as a proprietary handler's. The record of this proceeding clearly shows that it is the "give-up" cost of such shipments that represent the greatest part of the loss handlers incur in supplying the fluid market, regardless of their distance from distributing plants. To a great extent, any uneconomic handling and hauling caused by shipments of the small percentages of milk receipts required by this decision will be offset by the ability of handlers to form units for the purpose of meeting pooling qualifications.

National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC) took exception to the inclusion of the month of August in the qualifying period. In their exceptions, NFO and FUMMC stated that the market usage statistics do not suggest that August should be included

in the qualifying period. The record of the proceeding includes testimony by proponents that the proposed five-percent shipping level for August is less than the amount of milk that was actually shipped from supply and reserve supply plants in August 1986. Also, proponents testified that distributing plants need more milk in August because of school openings at the end of the month, with resulting higher Class I sales. There was no information at the hearing or in post-hearing briefs that would refute proponents' statements with regard to the desirability of including August in the months for which shipping requirements for reserve supply plants should be adopted. In fact, the market administrator's statistics clearly show a decrease in milk production during August compared with July production levels in both 1985 and 1986 and, at the same time, increases in Class I sales. In both years there is a corresponding increase in the percentage of producer milk used in Class I from July to August.

The problem of handling and hauling milk in an efficient and economical manner while complying with minimum shipping requirements can best be solved by allowing handlers to have the operations of their reserve supply plants considered on a combined, or unit, basis for the purpose of meeting pooling standards. Proponents initially proposed that a handler operating more than one reserve supply plant be allowed to have the plants' pool qualifications determined on a combined basis. Two of the proponents then testified that they would favor a provision allowing two or more cooperative associations to have their reserve supply plant operations considered on a combined basis for determining pool qualifications. Two opponents of the proposal advocated that if minimum shipping requirements are adopted, any group of handlers should be allowed to have their reserve supply plants pooled on a "unit" basis in order to enhance their efficiency of handling and hauling milk.

Allowing handlers to pool their reserve supply plants on a unit basis would counteract most of the inefficiencies involved in requiring minimum shipping percentages, and would decrease the cost of pooling for handlers that have only one plant or are distant from the center of the marketing area. Handlers within such a group may decide between themselves which plants should ship the qualifying milk to distributing plants and which plants would not need to ship. The unit would qualify for pooling, then, on the basis of the percentage of producer milk receipts

at all of the plants in the unit that is shipped to distributing plants. Although it is true, as one witness claimed, that savings in the operating costs of proprietary handlers are not necessarily passed on to producers, it is clear from the hearing record that the procurement of producer milk supplies in the Upper Midwest marketing area is extremely competitive. Under these circumstances, handlers that wish to procure supplies of producer milk must be willing to pay their producers a price competitive with prices paid to cooperative member producers. It is most likely that the very competitive procurement situation in the market will ensure that proprietary handlers pass savings in operations on to their producers.

Several parties that filed comments protesting the adoption of minimum shipping percentages expressed support for the concept of allowing all handlers in the market to participate in units for the purpose of meeting the shipping requirements, if such requirements are unavoidable. Those persons supported such a provision on the basis of the efficiencies in handling and hauling that would become available to all handlers if reserve supply plant operators are allowed to meet the required shipping percentages as members of units.

Mid-Am and AMPI, however, objected to the inclusion of proprietary handlers in units formed for qualifying purposes. The two cooperatives asserted that only cooperative associations should be allowed to form units for the purpose of meeting shipping requirements. In exceptions filed by Mid-Am, the cooperative stated that the record does not support the contention that procurement of milk supplies in the Upper Midwest market is competitive, that there is no evidence that proprietary handlers' cost savings are passed on to producers, and that no evidence of actual payments to producers was received. AMPI's exceptions claimed that a provision allowing proprietary handlers to participate in units formed for the purpose of meeting shipping percentages would allow proprietary handlers to allocate market shares between them, would necessitate agreement on terms of sales between proprietary handlers, and would allow reblending of producer payments by proprietary handlers.

The record contains direct, uncontroverted testimony by the Kraft witness that competition for milk supplies in the Upper Midwest market causes handlers to pay over-order premiums to producers. The witness stated that if a cooperative association is able to realize an operating efficiency

and pass the savings on to its members, proprietary handlers competing with the cooperative for supplies of producer milk would be forced to pass through any operational savings they might realize, as well. The AMPI representative testified that "calls" for milk for the fluid market were necessary because "some suppliers who are also competitors for producer milk were shipping very little, if any, milk to the Class I market." He explained that the competitors of these suppliers who normally would have shipped the extra milk had let a "call" be issued to assure equity among shippers. In addition to this testimony, the record as a whole describes a market in which handlers are most concerned with obtaining an adequate supply of milk to run manufacturing operations, and with keeping enough of their milk supply out of the fluid market to maintain an efficient level of operation in their manufacturing plants. There was no evidence presented about actual payments made to producers or about handlers' cost savings passed on to producers. However, in consideration of the market's competitive procurement situation and the fact that proprietary handlers and cooperatives operate manufacturing plants in competition with each other, it would be inequitable to incorporate in the order a provision that would enhance the efficiency of cooperatives and not proprietary handlers. While it is customary for cooperative associations to assume the primary burden of supplying milk to fluid milk handlers, the minimum shipping standards adopted in this decision will require the same level of performance of proprietary handlers as of cooperatives. All handlers should meet those standards under the same conditions.

AMPI's objections to allowing proprietary handlers to participate in units for the purpose of pool qualifications are groundless. Including proprietary handlers in the provision allowing handlers to form units would not necessitate the allocation of market shares between them, agreements on terms of sale, or the reblending of producer payments. The first two activities are prohibited by laws outside the Federal order program, and the reblending of producer returns by handlers other than cooperative associations is not authorized by the Agricultural Marketing Agreement Act of 1937, the legislation authorizing Federal milk orders. Allowing proprietary handlers to qualify their producers' milk for pooling as part of a unit merely allows such handlers to

have their receipts and deliveries to distributing plants to be considered on a combined basis for meeting shipping percentages. Proprietary handlers in the Upper Midwest milk market should have the same opportunities to attain efficiencies in the hauling and handling of their producer milk supplies as do cooperative associations. Accordingly, the provision allowing handlers to form units for qualifying purposes should not be changed to include only cooperatives.

A request for unit status should be filed with the market administrator by July 15, when requests for pool status for individual reserve supply plants are also due. These requests will assure that units formed for meeting shipping percentages are firmly established before each August through December shipping period. The requests filed by the handlers who wish to form units should specify the order in which plants would be eliminated from a unit if the unit fails to meet the minimum shipping percentages required by the order. Because of the provisions allowing plants that have been pool plants during an August through December period to retain automatic pool status through the following months of January through July, it is important that the composition of a unit change as little as possible during the qualifying period, with the exception of a plant eliminated because the unit does not meet the pooling standard. Administration of a provision that would allow handlers to add plants to a unit, as well as subtract them, would prove to be cumbersome. Therefore, no plant should be able to rejoin a unit after being eliminated for the unit's failure to qualify, and no plant should be permitted to join a unit after its initial formation. However, a plant which fails to meet the minimum shipping requirements, either singly or as part of a unit, may qualify for pooling as a reserve supply plant in any month thereafter during the August-December qualifying period. Reserve supply plants that refuse to meet "call" requirements, on the other hand, should not be able to regain pool reserve supply plant status by any means until the following August. In either case, a plant losing reserve supply plant status during any month of the qualifying period may qualify for pooling as a regular supply plant during the months of January through July by delivering to distributing plants a percentage of its receipts equivalent to the marketwide percentage of producer milk used in Class I during the same month of the previous year. Multi-plant handlers wishing to have their plants considered as a unit would be subject to the same

provisions as a group of handlers forming a unit.

The requirement that a request be filed with the market administrator to form a unit for the purpose of qualifying reserve supply plants for pooling is adapted from the present order provisions and proponents' proposal. The Upper Midwest order currently requires that a handler file a request for the pool status of a reserve supply plant at least 15 days prior to the first day of the month for which pool status is to begin. Proponents' proposal specifies that a reserve supply plant operator file such a request by each July 15 in order to obtain pool status for the plant for the following year. Timely notification to the market administrator of a handler's intention to qualify one or several reserve supply plants for pooling, or of the intention of a group of handlers to qualify a unit of reserve supply plants for pooling, will facilitate the effective administration of the order.

The 5- and 8-percent levels of required shipping percentages proposed by proponents will assure that all reserve supply plant operators will bear a significant and equitable share of the responsibility of supplying milk for Class I use. At the same time, the proposed percentages are not high enough to generate excess shipments of milk to distributing plants. According to the hearing record, shipments at the proposed percentages would not have supplied adequate supplies of milk to the fluid market during the fall months of 1986. It is expected that negotiations between reserve supply plant operators and distributing plant operators will be able to fill any gap between required and needed shipments. In any case, retention of the "call" provision and incorporation of a provision allowing the Director of the Dairy Division to temporarily reduce the required shipping percentages will give the order flexibility in dealing with any fluctuations in supply and demand.

In addition to establishing minimum shipping percentages to assure that reserve supply plants supply the fluid market on a more equitable basis than in the past, and incorporating unit pooling for groups of reserve supply plant operators to facilitate efficiency in handling and hauling, it is also important to assure that each plant included in the marketwide pool is at least capable of delivering milk to distributing plants. For this reason, the order should include a requirement that each reserve supply plant operator deliver at least 5 percent of its receipts to pool distributing plants during one

month of the August-December qualifying period.

Opponents argued that requiring any deliveries from small, poorly-located handlers violates the Regulatory Flexibility Act by placing an unfair burden on such handlers, and promotes inefficient and uneconomic handling. They cited the example of several handlers who had opted not to meet the shipping percentages required by the "call" for fluid milk supplies for the months of September, October and November 1986. As a result, opponents stated, the reserve supply plants operated by those handlers had been penalized by their ineligibility to be pooled for the next full year after losing pool status.

The level of shipping requirements adopted in this decision is neither unfair nor a violation of the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that the impact of government regulation on small businesses be considered and analyzed. The impact of requiring shipments from small handlers has been considered and found to be proportionate with the regulatory burden on all other handlers. Requiring no performance at all from small handlers is unfair to all of the other handlers who do deliver milk to distributing plants. Participation in the pool is not compulsory. Handlers must make business decisions about such matters as the cost of delivering a minor percentage of their milk supplies to the fluid market during one month versus the benefit of participating in the pool for a number of months without having to ship any milk for Class I use. If the cost of meeting the shipping requirements outweighs the benefit of sharing in the market's Class I use, then a handler is clearly better off not to give up that fraction of his milk supply. If, on the other hand, participation in the pool for a number of months is a greater benefit than the cost of releasing some milk to the fluid market for one month, meeting shipping requirements will be in the handler's best interests. Allowing handlers to form units to meet the order's minimum shipping standards will help to offset most of the inefficient or uneconomic handling practices promoted by the adoption of such standards.

Exceptions to the requirement that each reserve supply plant ship at least 5 percent of its receipts to pool distributing plants during one month of the qualifying period were filed by proponents as a group and by AMPI, Wisconsin Dairies Cooperative, and Mid-Am individually. Exceptions filed by Frigo Cheese, the Trade Association

of Proprietary Plants (TAPP) and on behalf of National Farmers Organization, Inc. (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC), also protested the inclusion of any shipping requirements in the order. Those filing exceptions stated that such a requirement would add nothing to the overall performance of the unit, but would increase transportation costs when shipments are required from remote or inconveniently located plants. In addition, AMPI objected to the adoption of such a provision on the basis that it was not included in the hearing notice and would remove some of the economies of operation currently enjoyed by multi-plant handlers who are able to unit pool their plants. Wisconsin Dairies' comments included a request for clarification as to whether milk shipments direct from producers' farms to distributing plants would be considered in determining whether the 5-percent requirement had been met. Several parties' comments included the suggestion that if shipments by each member of a unit are to be required, such a requirement should be limited to only one load of milk during the fall qualifying months.

The 5-percent shipping requirement for one month of the qualifying period should be included in the amended order, with some clarification and a small modification. The paragraph of the order allowing handlers to have their reserve supply plants considered as parts of units for pool qualification purposes states that such units may qualify by meeting the percentage requirements "in the same manner as a single plant." The paragraphs describing the shipping standard to be met by a single plant contain language that includes as qualifying shipments deliveries of milk from producers' farms directly to pool distributing plants. Therefore, such milk movements should be included in determining the level of performance of a plant, or handler, that is pooled as part of a unit. The requirement that each reserve supply plant that is pooled as part of a unit ship at least 5 percent of its milk to distributing plants during one month of the qualifying period should be modified to apply to each handler operating reserve supply plants that are pooled as part of a unit. This modification will allow handlers to market their producers' milk in the most efficient and economical manner possible, while assuring that each handler is able, as well as willing, to supply milk to the fluid market.

The requirement that each handler participating in a unit ship 5 percent of its milk receipts to distributing plants is more equitable than a requirement of one load per handler during the qualifying period. One load would represent a much greater share of a small handler's milk supply than it would of a large handler's. As discussed above, the 5-percent requirement is a minimal standard. Handlers are, after all, not required to qualify for pooling and certainly may avoid meeting the standard of 5 percent during one month of the qualifying period if pool status is not of great enough benefit to justify incurring that cost. The ability to participate in units will allow participating handlers to attain operating efficiencies that otherwise would not be available during the August through December mandatory shipping period.

Although the hearing notice in this proceeding contained no proposal requiring all reserve supply plant operators to meet a minimum shipping standard during one month of the qualifying period in order to qualify for pooling as part of a unit, proponents' proposal would have required each handler operating reserve supply plants to ship minimum percentages of its milk to distributing plants during each month of the five-month qualifying period. Therefore, the five-percent shipping requirement for one month of the qualifying period falls well within the scope of the hearing notice.

As proposed by proponents, the provision authorizing the market administrator to issue a "call" for supplies of milk for Class I use from reserve supply plants should remain in the order. Although it is anticipated that the percentage shipping standards adopted herein will result in an adequate supply of milk for fluid use, with occasional need for negotiation, it is possible that additional milk may be required at some time during the year. The "call" provisions proposed by proponents are identical to those currently contained in the Upper Midwest order. Aside from an objection to the existence of any requirements that milk be moved from reserve supply plants to distributing plants, no modifications of the present "call" provisions were proposed. Even so, one change should be made. The provision that precludes a plant from being pooled as a reserve supply plant for a full year after failing to comply with announced shipping requirements should be changed to prohibit such a plant from being pooled through the following July. Under the present order provision, if

failure to comply with a "call" occurred, for instance, during the month of October, the plant would not be eligible for pooling as a reserve supply plant until the following October. As a result, under the present order provision the plant not only could not be a pool reserve supply plant from the months of January through July immediately following its failure to comply, but would also be ineligible for an additional January through July period because of its failure to be pooled for the months of August and September of the following year.

In order to assure that excessive movements of Class I milk to distributing plants are not required of reserve supply plant operators, the Director of the Dairy Division should have the discretion of reducing the minimum shipping percentages. This aspect of proponents' proposal would add needed flexibility to the requirement that reserve supply plants ship at least a certain percentage of their receipts to distributing plants. If less than the required percentages of milk are needed to fulfill the market's fluid needs, the objective of efficient marketing would be better served by allowing the excess milk to remain in manufacturing plants. There is no need to include authorization for the Director to increase the required percentages. If additional milk supplies are needed for Class I use, the ability of the market administrator to issue a "call" for the needed milk will expedite the shipment of such supplies.

Proponents' proposal to reduce the requirement that a reserve supply plant receive a daily average of 25,000 pounds of milk per day to 25,000 pounds on two consecutive days should be denied. As stated earlier, only those plants that actually are capable of supplying milk to the fluid market should be eligible for pooling as reserve supply plants. A plant that receives only 25,000 pounds of milk on two consecutive days of a month represents no real potential supply of milk to the fluid market. As stated by the NFO witness, the current requirement is minimal, and should be maintained.

AMPI's exceptions to the recommended decision urged that the proposal to reduce the required quantity of receipts at reserve supply plants from a daily average of 25,000 pounds of milk to 25,000 pounds on only two consecutive days of each month be reconsidered and adopted. The cooperative pointed out that the total amount of required receipts currently does not have to be spread throughout the month, but can be received in two

days. Therefore, AMPI stated, requiring more milk to move through a reserve supply plant does not increase the plant's capability of supplying milk to the fluid market. The cooperative argued that a plant that can put together a tankerload of milk in two days can continue to do so every other day, and concluded that milk can be moved more economically directly to manufacturing plants rather than be required to be received at a reserve supply plant. Comments filed by NFO supported retention of the 25,000-pound per-day requirement for the reason that reserve supply plants would have minimum supplies available to ship.

A plant that receives a half-load of milk on only two days of a month is clearly not being operated as a supply plant, and cannot realistically be regarded as a potential source of milk supplies for the fluid market. This provision of the order should not be amended.

Rulings on Proposed Findings and Conclusions

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

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest 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) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) 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 marketing area, and the minimum prices specified in the tentative marketing agreement and the

order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Upper Midwest marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the *Federal Register*.

Determination of Producer Approval and Representative Period

January 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended) and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on April 27, 1988.

Karen K. Darling,
Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-9716 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1230

Pork Promotion, Research and Consumer Information

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this proposed rule would increase the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1987 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

DATE: Comments must be received by June 2, 1988.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610-S; P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the *Federal Register* (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This proposed rule would

increase the assessments per pound on 2 of the 13 imported pork and pork products subject to assessment by an amount of one-hundredth of a cent per pound. Adjusting the rate of assessments on imported pork and pork products would result in an estimated \$30,000 more in assessments over a 12-month period. While the proposed rule would result in an increase in assessments, any additional costs would be outweighed by the benefits derived from the operations of the pork promotion, research, and consumer information program. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported live porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the *Federal Register* (51 FR 31898; as corrected at 51 FR 36383) and assessments began on November 1, 1986. The Order requires importers of porcine animals to pay to the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound for each type of such products.

This proposed rule would increase the per-pound assessments on specified imported pork and pork products. This increase would be consistent with increases in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1987 as reported by the USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in cents-per-pound assessments will make the equivalent market value of the live

porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, *Federal Register* at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment amount due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product.

The formula in the preamble to the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1987, the average annual seven market price rose to \$51.04, an increase of about 1 percent over the 1986 per hundredweight price, which results in an increase in assessments for two TSUS categories 107.3515 and 107.3525, in an amount equal to one-hundredth of a cent

per pound. These two TSUS categories are for cooked, canned, boneless hams and shoulders. Based upon the conversion formula described above and the average seven market price of \$51.04, the remaining 11 TSUS categories would not require an increase in assessments. Based on Department of Commerce, Bureau of Census data on the volume of imported pork and pork products for 1987, the proposed increase in the per-pound assessment would result in an estimated \$30,000 in additional assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801-4819.

2. Amend Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

The following imported pork and pork products are subject to assessment in the amount per pound as follows:

	Assessment (dollars per pound)
Pork and Pork Products (U.S. Tariff Schedule No.):	
106.4020.....	0.0018
106.4040.....	.0018
106.8000.....	.0018
106.8500.....	.0018
107.1000.....	.0025
107.1500.....	.0025
107.3020.....	.0018
107.3040.....	.0019
107.3060.....	.0021
107.3515.....	.0028
107.3525.....	.0028
107.3540.....	.0019
107.3560.....	.0025

Done at Washington, DC, on April 28, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-9717 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments submitted by the State of Missouri to amend its permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed regulation changes are in the areas of fish and wildlife, revegetation, penalty assessment, protection of cultural or historic places, and alternative bonding system. The State is proposing these changes to bring its regulations into compliance with the Federal regulations.

This notice sets forth the times and locations that the Missouri program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Missouri's proposed modification of its program not received on or before 4:00 p.m. c.d.t. on June 2, 1988, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on May 31, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William J. Kovacic at the Kansas City Field Office by the close of business on or before May 18, 1988. If no one has contacted Mr. Kovacic to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Kovacic, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to Mr.

William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106. Copies of the Missouri program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office, OSMRE Headquarters Office, and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. c.d.t., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5492.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102; Telephone: (314) 751-4041.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:**I. Background**

The Secretary of the Interior approved the Missouri program on November 21, 1980 (45 FR 77017). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980 *Federal Register* (45 FR 77017). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 925.10, 925.15, 925.16 and 925.20.

II. Submission of Amendments

On March 18, 1988 (Administrative Record No. MO-371) the State of Missouri submitted to OSMRE amendments to its approved regulatory program. The proposed changes are summarized briefly below:

Fish and Wildlife

1. Missouri proposes to amend its regulations for protection of fish and wildlife at 10 CSR 40-3.100(2), 10 CSR 40-3.250(1)(B), 10 CSR 40-6.040(11), 10 CSR 40-6.050(7), 10 CSR 40-6.110(11) and 10 CSR 40-6.120(12) to respond to a regulatory reform letter dated June 11, 1986 (Administrative Record No. MO-295), issued by OSMRE under 30 CFR Part 732. The amendments are proposed to bring the State regulations into compliance with the Federal regulations at 30 CFR 779.20, 780.16, 783.20, 784.21, 816.97(b), 817.97(b), 816.97(c), and 817.97(c).

Revegetation

2. Missouri proposes to amend its regulations for determination of revegetation success at 10 CSR 40-3.120(1), (6) (A) and (B) and (7)(C), 10 CSR 40-3.270(1), (6) (A) and (B) and (7)(C) in response to a letter dated June 11, 1986, on regulatory reform (Administrative Record No. MO-295) issued by OSMRE under 30 CFR Part 732. The amendments are proposed to bring the State regulations into compliance with the Federal regulations at 30 CFR 816.111(a)(3), 817.111(a)(3), 816.111(b)(3), 817.111(b)(3), 816.116(a)(2), 817.116(a)(2), 816.116(b)(3)(i), 817.116(b)(3)(i), 816.116(b)(3)(iii) and 817.116(b)(3)(iii).

Protection of Cultural and Historical Resources

3. Missouri proposes to amend its coal regulations for the protection of cultural and historical resources at 10 CSR 40-6.040(3)(B), 10 CSR 40-6.050(14), 10 CSR 40-6.110(3)(B), 10 CSR 40-6.070(8)(E) and 10 CSR 40-6.120(8) to respond to a letter from OSMRE dated June 9, 1987 (Administrative Record No. MO-364), under 30 CFR Part 732. The amendments are proposed to bring the State regulations into compliance with the Federal regulations at 30 CFR 779.12(b), 783.12(b), 780.31 (a) and (b), 784.17 (a) and (b), and 773.15(c)(11).

Bonding

4. Missouri proposes to amend its regulations concerning Missouri's alternative bonding system at 10 CSR 40-7.011(2) (D), (E) and (F) as a partial response to a letter from OSMRE dated January 30, 1986 (Administrative Record No. MO-351) under 30 CFR Part 732. The proposed amendment concerns the required bond amounts per permitted acre and the minimum bond for a single mine.

Penalty Assessment

5. Missouri proposes to amend its regulations for informal assessment conferences at 10 CSR 40-8.040(8) in response to a required program amendment placed on the Missouri program on January 7, 1987 (52 FR 534) at 30 CFR 925.16(k) stating the time period for the informal conference and establishing terms for dismissal and payment of the penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Missouri satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Kansas City, Missouri, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. c.d.t. May 18, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate and appropriate questions.

The public hearing will continue on the specified date with all persons scheduled to comment being heard first, and those persons present in the audience who wish to comment being heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to

discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 925

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Date: April 22, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-9702 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3374-1]

Ohio; Approval and Promulgation of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to disapprove a revision to the Ohio State Implementation Plan (SIP) for ozone. The requested revision consists of a permanent relaxation of the volatile organic compound (VOC) emission limits previously approved by USEPA for the paper coating line at the Ameri-Cal Corporation facility in Medina County, Ohio.

USEPA is proposing to disapprove this revision because the source is located in Medina County which is part of the Cleveland ozone demonstration area; and the State has not demonstrated that the requested revision would limit VOC emissions to levels reflecting the application of reasonably available control technology, or that the revision would not interfere with timely attainment of the ozone standard, or with progress towards attainment in the interim. The source remains subject to the control requirements of the Ohio Administrative Code (OAC), Rule 3745-21-09(F).

DATE: Comments on the requested SIP revision and on the proposed USEPA action must be received by June 2, 1988.

ADDRESSES: Copies of the requested SIP revision are available at the following addresses for review: (It is recommended that interested parties telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Division of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Copies of the Technical Support Document for this proposed rulemaking are also available from the Region V Office. Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch, (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On May 9, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific ozone SIP revision request for Ameri-Cal Corporation of Medina County, Ohio. USEPA has completed its review of this request and is today proposing to disapprove the request.

Summary of SIP Revision

The Ameri-Cal Corp. operates a custom-designed knife-over-roll adhesive coating line (Source K001) which coats and cures the adhesive laminate to the paper substrate materials. This is defined as a paper coating line and is subject to OAC Rule 3745-21-09 (F) which limits the emission of volatile organic compounds (VOC) to 2.9 pounds per gallon of coating, less water. Alternatively, the source may comply with this rule via the installation of add-on control equipment. Ameri-Cal Corp. is subject to the April 1, 1982, compliance date contained in OAC Rule 3745-21-04(C)(5).

OEPA has submitted to USEPA a request for a SIP revision that consists of a permanent relaxation of the VOC emission limits for the paper coating line. This request was submitted in the form of a variance issued by Ohio EPA to Ameri-Cal. The variance contains the following terms and conditions:

1. Source K001 is required to utilize coatings with VOC contents, not to exceed 4.8 lbs/gallon of coating less water.

2. Source K001 shall not emit VOC in excess of 22.7 tons per year.

3. The company is required to maintain detailed records on coatings used and submit a semi-annual report indicating that the variance requirements are met.

To support the SIP revision request, OEPA has submitted information that purports to demonstrate that it is not economically reasonable for Ameri-Cal to install add-on control equipment, and that coatings which comply with OAC Rule 3745-21-09(F) are not currently available and are not expected to be available in the near future.

USEPA Evaluation

Section 110(a)(2)(B) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(B), requires that SIPs for an air pollutant include such control measures as are necessary to ensure attainment and maintenance of the NAAQS for that pollutant. Section 110(a)(3)(A) of the Act, 42 U.S.C. 7410(a)(3)(A), applies this same requirement to revisions of the plans. USEPA's regulations implementing section 110 assign to the States the burden of demonstrating that their plans satisfy this requirement (40 CFR 51.13(e), 51.14(c)).

Ameri-Cal is located in Medina County which is an attainment area for ozone. Although Medina County has been designated an attainment area for ozone, Ohio has made it a part of the demonstration area for Cleveland which is nonattainment for ozone. Because the State takes credit for VOC reductions in Medina County in the attainment demonstration for the Cleveland area, USEPA maintains that Medina County should be considered part of the Cleveland nonattainment area for the purposes of the Sheldon Meyers' policy memorandum dated July 29, 1983 (entitled: "Source-Specific SIP Revisions"; Sheldon Meyers was the former Director of USEPA's Office of Air Quality Planning and Standards). This memo states:

For a State to secure USEPA approval of a relaxation (in a nonattainment area) and continue overall approval status (of its SIP), however, the State would need to show that the SIP as a whole, despite the relaxation, would continue to "provide for" attainment by the end of 1982 in the case of nonextension areas or as expeditiously as practicable, but no later than 1987 in extension areas. For VOC this generally will require a data base and modeling demonstration consistent with that applied in extension areas.

For this reason, the State must demonstrate that any SIP relaxation in Medina County, along with the ozone precursor emissions from the other counties comprising the Cleveland demonstration area, does not contribute to the downwind ozone standard violation in the Cleveland area.

The State did not submit such a demonstration. Although Ohio submitted an ozone attainment demonstration for Cleveland on May 16, 1986, this demonstration is still under review by USEPA. For this relaxation to be approved, Ohio may remove Medina County, which is an attainment area, from the Cleveland demonstration area and show that the relaxation would not interfere with attainment or maintenance in either Medina County or the Cleveland demonstration area. Alternatively, Ohio may wish to provide further technical support that this relaxation is already considered in the Cleveland demonstration of attainment (i.e., the emissions increase from this relaxation is explicitly considered in Cleveland's demonstration of attainment). If already included, USEPA could only approve the revision if and when the Cleveland SIP is approved.

USEPA is soliciting comments as to whether USEPA should require sources in areas designated to attainment for ozone that are nearby nonattainment areas to maintain a reasonable available control technology (RACT) level of control to demonstrate attainment and maintenance of the ozone standard.

Conclusion

Based on the deficiencies detailed above, USEPA is proposing to disapprove the SIP revision request for Ameri-Cal Corp. in Medina, Ohio.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities, because it affects only one source.

In addition, this action imposes no new requirements on the source. Under Executive Order 12291, this action is not "major." It has been submitted to the Office of Management and Budget for review.

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

Dated: December 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-9752 Filed 5-2-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3373-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion and Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing a one-time exclusion of certain retreated solid wastes, generated by U.S. Nameplate Company, Incorporated, located in Mount Vernon, Iowa, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. In addition, EPA is proposing to deny exclusion for those wastes located in the waste management unit specified in the petition and that are derived from the petitioned wastes prior to their retreatment. The effect of the proposed exclusion would be to retain regulation of the unit under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 40 CFR Part 265. These actions respond to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decisions are based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decisions and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 17, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions and/or the model used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by May

18, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-USEP-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Robert Kayser, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors.

Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used To Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that

the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and also to determine the potential impact of the unregulated disposal of Nameplate's petitioned waste on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the

waste at the on-site landfill. In fact, it is likely that the generator will either chose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Nameplate is seeking a delisting for waste contained in an inactive surface impoundment, ground-water monitoring data collected from the area where Nameplate stores the waste are necessary to determine whether hazardous constituents have migrated from the unit to the underlying ground water. Because the petitioned waste is stored (and disposed, if the petition is granted) on-site, ground-water data collected from Nameplate's monitoring wells are compared directly to the levels of regulatory concern for particular hazardous constituents detected in the ground water and will help to characterize the potential impact (if any) of the unregulated disposal of Nameplate's petitioned waste on human health and the environment.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, final decisions will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

U.S. Nameplate Company,
Incorporated, Mount Vernon, Iowa.

1. Petition for Exclusion

U.S. Nameplate Company Incorporated (Nameplate), located in Mount Vernon, Iowa, manufactures etched nameplates. Nameplate petitioned the Agency to exclude the sludge contained in its on-site, unlined, surface impoundment. This sludge is presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed

constituents of concern for F006 wastes are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Nameplate petitioned to exclude its waste, claiming that the waste does not meet the criteria for which it was listed. Nameplate also claims that its treatment process generated a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. Nameplate further claims that its surface impoundment sludge is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f); 40 CFR 260.22(d)(2)-(4). Today's proposal to grant the petition in part is the result of the Agency's evaluation of Nameplate's petition in light of Nameplate's subsequent retreatment of its sludge.

2. Background

On December 18, 1984, Nameplate petitioned the Agency to exclude its wastewater treatment sludge. On July 23, 1986, the Agency proposed to deny Nameplate's petition based on the fact that the surface impoundment sludge contained excessive total concentrations of trichloroethylene (TCE). See 51 FR 26428 for a complete description of Nameplate's manufacturing and waste treatment processes, for a discussion of the Agency's previously proposed decision to deny Nameplate's petition, and for a discussion of ground-water contamination, primarily TCE contamination, indicated at Nameplate's facility. As a result of the proposed decision to deny this petition, Nameplate attempted to reduce the waste's total concentration of TCE through mechanical aeration of the impounded waste. During the public comment period, Nameplate requested that the Agency re-evaluate the retreated waste.

In order to verify the representative nature of the data submitted by petitioners, the Agency randomly selects some percentage of petitioning facilities to visit as part of its spot-check sampling and analysis program. In the spot-check program, EPA performs limited analyses to assess waste samples for the presence of EP toxic metals, nickel, cyanide, and the priority pollutants (a subset of the constituents of concern, which includes the volatile, semi-volatile acid extractable and base/neutral extractable compounds, and the organochlorine pesticides/

polychlorinated biphenyls (PCBs) listed in Appendix VIII). The Agency has limited its spot-check search to these compounds because this is solely a quality assurance verification, rather than a data submission analysis, because of the expense of conducting complete scans for all constituents of concern, and because a complete scan would usually not be necessary to detect those constituents most likely to be present in common industrial wastestreams. EPA Headquarters routinely reviews all of the spot-check data in order both to verify the quality of the analytical data presented by the petitioner and to determine whether the petitioner has submitted (or omitted) analytical data quantifying the concentrations of the listed and non-listed constituents of concern present in the petitioned wastestream.

On August 12, 1986, as part of the Agency's spot-check sampling and verification program, EPA Headquarters conducted a spot-check sampling visit at Nameplate's facility. For surface impoundments like Nameplate's, petitioners are normally required to divide the unit into four quadrants and to collect five full-depth core samples from each quadrant. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples.

The Agency divided Nameplate's 85 foot by 56 foot surface impoundment into four quadrants and randomly collected 11 full-depth core samples from each quadrant. An additional full-depth core sample was randomly collected from quadrant A of the surface impoundment, raising to 45 the total number of full-depth core samples collected. Each core sample was collected by driving a coring device through the waste until the bottom of the surface impoundment was reached (the depth of the sludge ranged from one to three feet), thus collecting a representative core sample of all the layers of retreated sludge in the surface impoundment. Table I illustrates how the Agency composited the full-depth core samples for the various analyses performed.

TABLE 1.—COMPOSITING OF SAMPLES FOR ANALYSIS

Sample identification	Volatile organics (sample number)	EP toxic metals, nickel, cyanide, and priority pollutants (sample number)
Quad A1 + A2	1	1
Quad A3 + A4	2	1
Quad A5 + A6	3	1
Quad A7 + A8	4	1
Quad A9 + A10	5	1
Quad A11 + A12	6	1
Quad B1 + B2	7	2
Quad B3 + B4	8	2
Quad B5 + B6	9	2
Quad B7 + B8	10	2
Quad B9 + B10 + B11	11	2
Quad C1 + C2	12	3
Quad C3 + C4	13	3
Quad C5 + C6	14	3
Quad C7 + C8	15	3
Quad C9 + C10 + C11	16	3
Quad D1 + D2	17	4
Quad D3 + D4	18	4
Quad D5 + D6	19	4
Quad D7 + D8	20	4
Quad D9 + D10 + D11	21	4

As illustrated in Table 1, twenty-one composite samples were analyzed for volatile organic compounds and four composite samples were analyzed for the remaining priority pollutants, EP toxic metals, nickel, and cyanide.

The Agency also collected one sample of ground water from Nameplate's upgradient monitoring well and another from its single downgradient monitoring well to determine if Nameplate's impounded waste was contaminating the underlying ground water. As recommended by the Technical Enforcement Guidance Document, the ground-water samples were not filtered in the field. See "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (TEGD)," EPA, September 1986. Both samples of ground water were analyzed for the priority pollutants, EP toxic metals, nickel, and cyanide. On February 23, 1987, the Agency announced the availability of the spot-check and verification data and requested public comment on the data in the *Federal Register*. See 52 FR 5472. No public comments were received on this notice.

Since the Agency's spot-check visit, Nameplate has submitted three rounds of monitoring data. Nameplate's ground-water monitoring data only consisted of analysis and results for TCE, which were submitted in an attempt to challenge the EPA Headquarters spot-check data and the EPA Region VII data demonstrating the presence of TCE. See

51 FR 26428, July 23, 1986 for a discussion of the EPA Region VII ground-water monitoring data.

3. Agency Analysis

The Agency used SW-846 method numbers 8240, 8270, and 8080 to quantify the total constituent concentrations (*i.e.*, mg of a particular constituent per kg of waste) of the priority pollutants in Nameplate's waste. Detection limits for the volatile compounds ranged between 0.049 mg/kg and 0.25 mg/kg, except for acetone, which was 1.3 mg/kg. The detection limit for the semi-volatile acid and base/neutral extractable compounds was 1.1 mg/kg and the detection limit for the pesticides was 0.002 mg/kg. These detection limits represent the lowest concentrations quantifiable by the Agency, when using the appropriate SW-846 analytical methods to analyze Nameplate's waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices vary and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

The Agency did not detect any priority pollutants except TCE. The maximum total constituent concentration of TCE was 1.5 mg/kg.

The Agency used SW-846 method numbers 6010, 7040-7951, and 9010 to quantify the total constituent concentrations and SW-846 Method Number 1310 to quantify the leachable concentrations (*i.e.*, mg of a particular constituent per liter of extract) of the EP toxic metals, nickel, and cyanide in Nameplate's waste. Table 2 presents the maximum total constituent concentrations and EP leachate concentrations of the EP toxic metals, nickel, and cyanide.

Using SW-846 method number 3540, the Agency determined that Nameplate's waste had a maximum oil and grease content of 0.26 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may have significant concentrations of the constituent of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure). See SW-846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

TABLE 2.—MAXIMUM CONCENTRATIONS RETREATED SURFACE IMPOUNDMENT SLUDGE (PPM)

Constituents	Total constituent concentration	EP leachate concentration
Arsenic	8.0	<0.01
Barium	170	<0.5
Cadmium	<2.9	<0.01
Chromium	390	<0.05
Lead	<29	<0.2
Mercury	0.07	<0.0002
Selenium	<1.4	<0.01
Silver	<1.4	<0.01
Nickel	58	0.28
Cyanide	0.37	¹ 0.02

¹ Calculated by assuming a dilution factor of 20 times (based on 100 grams of sample and dilution of 2,000 mls of water) and a theoretical worst case leaching of 100 percent.

Nameplate submitted a signed certification stating that its surface impoundment contains approximately 422 cubic yards of retreated sludge (based on both the size of the surface impoundment and depth of the retreated sludge). The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Nameplate's certified estimate of 422 cubic yards.

Analyses for the priority pollutants and the EP toxic metals, nickel, and cyanide were performed on the two ground-water samples (one upgradient sample and one downgradient sample) collected by EPA Headquarters from Nameplate's site. Using detection limits of 0.002 mg/l, 0.05 mg/l, and 0.0001 mg/l, no volatile or semi-volatile (acid extractable and base/neutral extractable) compounds, or priority pollutant pesticides, respectively, were detected in either sample, except for TCE. (Due to the "cleanliness" of the ground-water sample matrices, it was possible to achieve detection limits lower than those achieved in the analysis of the sludge samples.) TCE was not detected (*i.e.*, the concentration was <0.002 mg/l) at Nameplate's upgradient well. TCE, however, was detected at a concentration of 0.012 mg/l at Nameplate's downgradient monitoring well. Neither sample contained concentrations of any of the EP toxic metals, nickel, or cyanide in excess of their respective levels of regulatory concern (*i.e.*, the concentration of each of the EP toxic metals, nickel, and cyanide was below its respective regulatory standard).

As mentioned earlier, Nameplate submitted three rounds of ground-water monitoring data (collected in 1986/1987) for TCE. Nameplate has not submitted analyses for any other constituents, nor

has Nameplate installed a monitoring system that complies with the requirements stated in 40 CFR Part 265, Subpart F. See 51 FR 26428 for a discussion of the inadequacies of Nameplate's monitoring system. The results of the first round of Nameplate's monitoring data did not reveal TCE in either the upgradient or the downgradient monitoring well; however, Nameplate's laboratory used a detection limit of 0.004 mg/l (which was greater than the regulatory standard for TCE at that time of 0.0032 mg/l). The Agency informed Nameplate that its initial detection limit was too high and that the detection limit used in subsequent analyses must be lower (at least <0.003 mg/l). Nameplate's second round of ground-water monitoring samples was analyzed using a lower detection limit (<0.002 mg/l) and revealed that TCE was not present in either the upgradient or downgradient monitoring well (*i.e.*, the concentration of TCE in the ground water was <0.002 mg/l). Nameplate's third round of ground-water monitoring samples was analyzed using an even lower detection limit (<0.0005 mg/l) and revealed that TCE was now present at the downgradient monitoring well at a concentration of 0.0056 mg/l. TCE was not detected at the upgradient monitoring well.

In Nameplate's case, TCE has been detected on three occasions, by EPA Headquarters (spot-check data), by EPA's Region VII office (see 51 FR 26428), and by Nameplate (once each), while on two other occasions TCE was not detected by Nameplate. Both the detected values and non-detected values of TCE came from the same inadequate downgradient monitoring well. Because Nameplate's monitoring system is inadequate, it is not possible to characterize the extent of dispersion of the traveling plume of TCE contamination and, therefore, it is not possible to determine which ground-water samples are statistically valid (*i.e.*, without any data characterizing the geology and hydrogeology of Nameplate's site, it is not possible to determine the statistical validity of either the detected values or the non-detected values). In Nameplate's case, EPA, therefore, believes that it cannot use the non-detected values to refute the detected values.

4. Agency Evaluation

Nameplate stated in its petition that, if its petition is granted, the surface impoundment will be closed and the petitioned waste will remain in the closed surface impoundment. The Agency considered the appropriateness of alternative disposal scenarios for

wastes disposed in closed surface impoundments and decided that a landfill scenario is the most reasonable, worst-case scenario because Subpart K of Part 265 specifies that a closed surface impoundment, still containing wastes, is subject to the post-closure care requirements for landfills under Subpart G of Part 265 and also § 265.310 (*i.e.*, to remove free liquids, to cap the surface impoundment, etc.). Under this disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the leachability and potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Nameplate's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of cyanide and nickel from Nameplate's waste. The Agency's evaluation, using the waste volume of 422 cubic yards and the maximum EP leachate concentrations of cyanide and nickel in the VHS model, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*e.g.*, arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver) from Nameplate's waste because they were not detected in the EP extract (see Table 2) using the appropriate SW-846 analytical test methods. The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment. In this case, even

the use of the detection limits (presented in Table 2) in the VHS model does not yield compliance-point concentrations above health-based levels.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS RETREATED SURFACE IMPOUNDMENT SLUDGE (MG/L)

Constituent	Compliance-point concentration	Regulatory standard
Nickel.....	0.0086	0.50
Cyanide	<0.0006	0.2

The retreated sludge exhibited nickel levels at the compliance point below the Agency's standard of 0.50 mg/l. See Verified Reference Doses (RfDs) of the U.S. EPA, ORD/ECAO-CIN-475, January 1986. The concentration of cyanide at the compliance point is below the Agency's standard of 0.2 ppm. See Verified Reference Doses (RfDs) of the U.S. EPA, ORD/ECAO-CIN-475, January 1986. Additionally, because the concentration of total cyanide is less than 0.37 ppm, the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency also calculated the mobile portion of the total constituent concentrations of TCE using the organic leachate model (OLM). See 51 FR 41082, November 13, 1986. The compliance-point concentration of leachable TCE was then evaluated using the VHS model, which predicted a concentration of 0.0013 mg/l for TCE. Thus, TCE is present in concentrations below the 0.005 mg/l level of regulatory concern. See Internal Agency Memorandum dated October 24, 1986, entitled "Derivation of Health-based Criteria for the Delisting Effort," in the RCRA public docket, for an explanation of the derivation of this regulatory standard. Retreatment has substantially reduced these levels from the levels described in the Agency's previous proposal to deny Nameplate's petition. See 51 FR 26428, July 23, 1986. At that time, TCE was found to be present in 19 of 21 samples at concentrations of regulatory concern sufficient to warrant denying the petition. The Agency has concluded that the reduced concentrations of TCE no longer warrant denying delisting of Nameplate's retreated waste because of the presence of TCE. Additionally, the Agency does not believe that there are any other hazardous constituents present at concentrations of regulatory

concern nor other factors that might cause Nameplate's retreated waste to be hazardous.

Nevertheless, the ground-water contamination with TCE supports the Agency's contention that the unit at one time held a hazardous waste. By mechanically aerating the impounded sludge, Nameplate volatilized a large portion of the TCE, thus leaving only a maximum of 1.5 mg/kg of TCE in the sludge. The Agency does not believe that this low level of TCE is sufficient to cause the levels of ground-water contamination found by both EPA Headquarters and EPA Region VII. The Agency is unable to conclude that the impounded sludge, prior to retreatment, did not cause and is not continuing to cause the ground-water contamination.

5. Conclusion

Because the Agency collected more than two times the required minimum number of samples from Nameplate's surface impoundment, the Agency believes that the results of the August 1986 spot-check sampling and verification accurately characterize the physical and chemical nature of Nameplate's retreated surface impoundment sludge. Past analyses of Nameplate's waste (performed by Nameplate and by EPA Region VII, and discussed in the July 23, 1986 notice, 51 FR 26428) provide historical information concerning the physical and chemical nature of the impounded sludge prior to retreatment in July 1986. The Agency is basing its present evaluation of Nameplate's retreated waste on the data collected during the August 1986 spot-check and verification sampling trip, on the ground-water monitoring data submitted by EPA Region VII and Nameplate, and on the petitioned data for the waste prior to retreatment.

A. Retreated Waste

The Agency believes that Nameplate has successfully demonstrated that Nameplate's retreated wastewater treatment sludge is not hazardous. The Agency, therefore, is proposing that Nameplate's retreated waste be considered non-hazardous, as it should not present a significant hazard to either human health or the environment. The Agency, therefore, proposes to grant a one-time exclusion to U.S. Nameplate Company, Incorporated, located in Mount Vernon, Iowa, for its retreated wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the retreated wastewater treatment sludge should no longer be subject to regulation under 40 CFR Parts

262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the retreated wastewater treatment sludges covered by Nameplate's demonstration.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

B. Residual Waste at Nameplate's Surface Impoundment

EPA's decisions to exclude a waste from Subtitle C control are typically retrospective and typically deregulate, from Subtitle C control, those waste management units holding the petitioned waste, because such units would not be considered to have received a hazardous waste. See 40 CFR 260.10(a) for the definition of a hazardous waste unit. However, in cases where the original petitioned wastestream has been retreated (through aeration, chemical stabilization, reprocessing, etc.), the Agency may distinguish between the original petitioned waste and the newly retreated waste. That is, the delisting decision on the retreated waste may be prospective (effective from the date of retreatment forward) and may apply only to the retreated waste.

When treated wastes are hazardous, remaining residues (e.g., sludge and soil/sludge mixtures) containing or derived from the treated waste prior to retreatment are hazardous by definition, continue to be hazardous until excluded, and continue to constitute part of the waste management unit. See 40 CFR 261.3 (c)(2)(i) and (d)(2). A delisting decision for the retreated waste, therefore, does not affect the regulatory status of the unit which held the treated hazardous waste, if there is reason to believe that the treated waste was hazardous, and if waste residues containing or derived from the treated waste may still be present or if the waste already contaminated or is likely to contaminate the ground water in the future. Such units, therefore, continue to be classified as hazardous waste

continue to constitute part of the waste management unit. See 40 CFR 261.3 (c)(2)(i) and (d)(2). A delisting decision for the retreated waste, therefore, does not affect the regulatory status of the unit which held the treated hazardous waste, if there is reason to believe that the treated waste was hazardous, and if waste residues containing or derived from the treated waste may still be present or if the waste already contaminated or is likely to contaminate the ground water in the future. Such units, therefore, continue to be classified as hazardous waste units subject to all Subtitle C requirements, including closure requirements.

Nameplate's originally petitioned waste (prior to retreatment) contained TCE. As discussed in the July 23, 1986, proposal, EPA's Region VII Office had determined that TCE was present in the ground water beneath Nameplate's facility. The Agency's spot-check visit confirmed the presence of TCE in ground water, identifying a concentration of 0.012 mg/l in the downgradient monitoring well. The concentration of TCE detected in the downgradient well exceeds the current regulatory limit of 0.005 mg/l for TCE in drinking water. Since Nameplate's original waste contained TCE at sufficient levels to contaminate ground water, and ground-water contamination with TCE is present, the Agency is concerned that Nameplate's original waste may be responsible.

The Agency, therefore, proposes to limit the scope of today's decision to grant an exclusion only to Nameplate's regulated as such under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In addition, the denial of exclusion for the residual waste from the treated hazardous waste, if promulgated, does not change the existing requirements for this surface impoundment to operate as a hazardous waste management unit. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-

month deadline is not necessary to achieve the purpose of section 3010, EPA believes that the exclusion and denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion for a petitioned waste and to deny exclusion of residual wastes at the unit handling these wastes is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to

today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: April 28, 1988.

J.W. McGraw,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922.)

2. In Appendix IX, add to table 1 the following wastestream in alphabetical order:

Appendix IX.—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
U.S. Nameplate Co., Inc.	Mount Vernon, IA	Retreated wastewater treatment sludges (EPA Hazardous Waste No. F006) previously generated from electroplating operations and currently contained in an on-site surface impoundment after, [insert date of final rule's publication]. This is a one-time exclusion for the retreated wastes only. This exclusion does not relieve the waste unit from regulatory compliance under Subtitle C.

[FR Doc. 88-9753 Filed 5-2-88; 8:45 am]

BILLING CODE 5650-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Residency Training in General Internal Medicine and General Pediatrics

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice would revise the regulations governing the Grants for Residency Training in General Internal Medicine or General Pediatrics, authorized by section 784 of the Public Health Service Act (the Act), to conform the regulations with amendments made

by Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. These amendments added a provision for grants for projects to plan, develop, and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and to provide traineeships or fellowships to participants in such programs. In addition, this notice also proposes changes to conform the existing regulations with amendments made by Pub. L. 99-129, the Health Professions Training Assistance Act of 1985, and Pub. L. 99-239, the Compact of Free Association Act of 1985, as well as changes which are clarifying and ministerial in nature.

DATE: Comments must be received no later than July 5, 1988.

ADDRESS: Written comments may be addressed to Director, Bureau of Health Professions (BHP), Health Resources and Services Administration, Room 8-

05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHP, Room 7-74, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Donald L. Weaver, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-6190.

SUPPLEMENTARY INFORMATION: Section 784 of the Act authorizes the award of grants to schools of medicine and osteopathy, public or private nonprofit hospitals, or any other public or private nonprofit hospitals, or any other public or private nonprofit entity to meet the

costs of projects to plan, develop, and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics. This authority also authorizes financial assistance in the form of traineeships and fellowships to residents who are participants in any such program, and who plan to specialize or work in the practice of general internal medicine or general pediatrics. Regulations for Grants for Residency Training in General Internal Medicine or General Pediatrics are codified at 42 CFR Part 57, Subpart FF.

Public Law 97-35 extended support under section 784 to include projects to plan, develop, and operate a program for the training of physicians who plan to teach in a general internal medicine or general pediatrics training program. Authority is also provided for financial assistance in the form of traineeships and fellowships to physicians who are participants in any such program and who plan to teach in a general internal medicine or general pediatrics training program.

Accordingly, the Department is proposing to revise the regulations to implement this new authority. The proposed revisions are described below according to the section of the regulations they affect.

The Department is proposing to add the following terms to § 57.3102, entitled, "Definitions":

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibility.

This proposed definition was selected since it is consistent with the Title VII definition established through rulemaking procedures for the regulations governing the Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine codified at 42 CFR Part 57, Subpart Q.

"Trainee" means an allopathic or osteopathic general internist or general pediatrician participating in a faculty development training program supported by a grant under section 784 and receiving stipend support from such grant.

This proposed definition is intended to clarify that financial assistance will be provided only to general internists and general pediatricians who are or who will become the full-time faculty involved in the general internal medicine or general pediatrics training programs. The definition is not meant to exclude others from participating in the

faculty development program or its activities, but to identify which types of physicians are eligible for stipend support.

The Department proposes to add the following project requirements for faculty development programs to § 57.3105 entitled, "Project Requirements":

1. Applicants would be required to have a curriculum which emphasizes improvement of teaching skills and techniques, uses both didactic and experiential teaching strategies, and directly applies to general internal medicine and/or general pediatrics. General internal medicine and general pediatrics are emerging specialties that are currently lacking appropriate numbers of educational models as well as an adequate number of sufficiently trained faculty to teach in the specialties. These requirements would assure that physicians would be trained in pedagogical skills to enhance their teaching capabilities in both classroom didactic settings and in clinical teaching settings.

2. Training programs of 9 or more months duration would be required to include both a research and administrative component. This requirement would assure that long-term training programs address the broad spectrum of faculty roles and responsibilities required in academic settings. For long-term primary care fellowship training, it is recognized and accepted, among medical educators, that faculty members should have a balance of training and experience in education, research and administration. Also, for long-term training, a limited amount of time is necessary in clinical practice in order for the trainees to integrate their pedagogical and clinical skills. The requirement is not meant to limit the development of activities to research and administration, but rather to assure the inclusion of these components in the curriculum for long-term fellowship training. The Department also recognizes the need for training activities of a shorter duration, such as short-term fellowships of 3- or 6-months duration as well as one-time or short-term workshop or seminar activities. Short-term programs are beneficial to those institutions that: (1) May need to train current faculty, and (2) may need to focus on one area, e.g., improving the faculty members' teaching skills. Further, it is recognized that programs of a shorter than 9-month duration do not provide sufficient time to cover adequately the teaching, research and administrative skills. Therefore, the requirement for including research and

administrative components does not apply to the short-term programs.

3. Financial assistance to trainees would be required to be limited to a minimum of 3 months (full time) and a maximum of 24 months. This requirement is intended to provide a minimum training period that is expected to have the greatest impact in providing for behavioral changes in the trainees as well as maximize the use of Federal funds. Permitting a maximum of 24 months of stipend support will allow for the development of long-term fellowship training programs that will cover a broader range of training experiences required of new faculty, including, but not limited to, developing teaching, research and administrative skills.

The Department also proposes to revise § 57.3106, entitled "How will applications be evaluated?" by: (1) Including an additional review criterion for the evaluation of the faculty development program to assure that potential applicants have a training program which is consistent with the definition of a practice of general internal medicine or general pediatrics as defined under § 57.3102; and (2) removing all non-statutory funding priorities as listed in paragraphs (b)(1) and (b)(2). The Secretary has decided to remove these funding priorities as part of a newly implemented policy to announce, and solicit public comment on, any special factors related to national needs that will be considered in funding applications in periodic notices in the **Federal Register** and to retain in regulations only those funding priorities that are in the statute. The policy was adopted by the Secretary to provide maximum flexibility for program management, thus enabling the grant program to respond more quickly to new and emerging health care needs. The removal of the funding priorities currently codified does not necessarily preclude the announcement of all or part of these funding priorities in a forthcoming **Federal Register** notice.

Interested persons are invited to submit written comments to this notice to the Director of the Bureau of Health Professions at the address given above. All relevant materials received not later than July 5, 1988, will be considered in the development of final regulations.

In addition to the changes proposed above, it is necessary that certain technical and clarifying changes be made to conform the existing regulations with Pub. L. 97-35, Pub. L. 99-129, and Pub. L. 99-239 as follows:

1. Add "and Faculty Development" in the title and change "and" to "and/or" in

the title and in the text of the regulations, where appropriate, in accordance with Pub. L. 97-35.

2. Revise § 57.3101, entitled "To what projects do these regulations apply?", to organize the section and add the authorizing language for making faculty development programs applicable under this regulation, in accordance with Pub. L. 97-35.

3. Revise § 57.3102, entitled "Definitions.", by revising:

(a) The definition of "school of medicine or osteopathy" by removing the reference to section 701(4) and retaining section 701(5) regarding accreditation of the school; and

(b) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia," in accordance with Pub. L. 99-239.

4. Revise § 57.3103, entitled "Who is eligible to apply for a grant?", to add current departmental grants policy language to reflect that eligible institutions may submit an application as the Secretary may prescribe along with a footnote which provides the address for obtaining application forms and instructions.

5. Revise § 57.3104, entitled "What activities must be addressed in an application?", to:

(a) Add identifying and clarifying language for faculty development programs, where appropriate, throughout the section text;

(b) Add clarifying language to indicate that stipend support requested for trainees must be paid in accordance with established Public Health Service postdoctoral stipend levels; and

(c) Reflect the current OMB approval number at the end of the section text.

6. Revise § 57.3106, entitled "How will applications be evaluated?", to add a funding priority for residence training and faculty development programs which demonstrate a commitment to general internal medicine and/or general pediatrics in the institution's medical education training programs, in accordance with Pub. L. 99-129.

7. Revise § 57.3107, entitled "How long does grant support last?", to:

(a) Reflect current departmental grants policy language in paragraph (c) by adding a sentence regarding continuation support; and

(b) Remove paragraph (d), concerning federally obligated grant funds, and relocate it in § 57.3109, entitled "For what purposes may grant funds be spent?"

8. Revise § 57.3109, entitled "For what purposes may grant funds be spent?", by adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds in order to reflect current departmental grants policy language.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of \$100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act

The recordkeeping and reporting requirements in § 57.3104 and § 57.3111 and the application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB Approval Numbers are 0915-0060 for the regulations and the competing application form and 0915-0061 for the continuation application form). Section 57.3105 does not require clearance and therefore, the approval number shown at the end of this section text is removed.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR Part 57, Subpart FF is proposed to be amended as follows:

Dated: February 26, 1988.

Robert E. Windom,
Assistant Secretary for Health.

Approved: April 14, 1988.

Otis R. Bowen,
Secretary.

(Catalog of Federal Domestic Assistance, No. 13.900, Grants for Faculty Development in General Internal Medicine and/or General Pediatrics)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The title of 42 CFR Part 57, Subpart FF is revised to read as follows:

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics

2. The authority citation for Subpart FF is revised to read as follows:

Authority: Section 215, Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 784, Public Health Service Act, 90 Stat. 2315, as amended by 95 Stat. 922-923 and 99 Stat. 540 (42 U.S.C. 295g-4).

3. Section 57.3101 is revised to read as follows:

§ 57.3101 To what projects do these regulations apply?

The regulations of this subpart apply to grants to schools of medicine and osteopathy and public or private nonprofit hospitals and other public or private nonprofit entities under section 784 of the Public Health Service Act (42 U.S.C. 295g-4) to assist in meeting the costs of projects—

(a) To plan, develop and operate approved residency training programs in internal medicine and/or pediatrics which emphasize the training of residents for the practice of general internal medicine and/or general pediatrics;

(b) To provide financial assistance (in the form of traineeships and fellowships) to residents who are participants in this type of program, and who plan to practice general internal medicine and/or general pediatrics;

(c) To plan, develop and operate a program for the training of physicians who plan to teach in a general internal medicine and/or general pediatrics training program; and

(d) To provide financial assistance (in the form of traineeships or fellowships) to physicians who are participants in any such program and who plan to teach in a general internal medicine and/or general pediatrics training program.

4. Section 57.3102 is amended by adding the definitions for "faculty development program" and "trainee" in alphabetical order and by revising the definition for "school of medicine and osteopathy" and "State" to read as follows:

§ 57.3102 Definitions.

* * * * *

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibility.

"School of medicine and osteopathy" means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or to a degree of doctor of osteopathy and which is accredited as provided in section 701(5) of the Act.

The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Trainee" means an allopathic or osteopathic general internist or general pediatrician participating in a faculty development training program supported by a grant under section 784 and receiving stipend support from such grant.

5. Section 57.3103 is revised to read as follows:

§ 57.3103 Who is eligible to apply for a grant?

Any school of medicine or osteopathy, public or private nonprofit hospital or any other public or private nonprofit entity, located in a State, may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.¹

6. Section 57.3104 is amended by revising paragraphs (a), (d), (e), and (h) and the parenthetical statement at the end of the section text. Paragraph (c) of this section is amended by removing "(j) and (l)" in the parenthetical statement and inserting "(10) and (12)" in its place.

§ 57.3104 What activities must be addressed in an application?

(a) A proposal for a project to plan, develop, and operate an approved residency training or faculty development program in internal medicine and/or pediatrics—

(1) Which emphasizes the training of residents for the practice of general internal medicine and/or general

pediatrics and faculty for teaching in such programs, and

(2) Which may provide financial assistance to residents and trainees who are participants in the programs and who plan to practice or teach in general internal medicine and/or general pediatrics.

(d) In programs other than faculty development, a description of the type and amount of training to be offered to residents in each year of each residency program in accordance with the requirements of § 57.3105(a)(11).

(e) In programs other than faculty development, the number of residents to be enrolled in each program, at each level of training, for each year of the project period.

(h) If stipend support is requested by an applicant to provide a portion of the salary of residents enrolled in the program, documentation showing that income available from alternative sources, including income derived from the services of the residents in the program, will be insufficient to pay their salaries and that grant funds will not be used to supplant other available funds. Stipend support requested for trainees in the faculty development program must be paid in accordance with established Public Health Service postdoctoral stipend levels.

(Approved by the Office of Management and Budget under control number 0915-0060.)

7. Section 57.3105 is amended by designating the introductory paragraph as paragraph (a); by redesignating paragraphs (a)-(n) as paragraphs (1)-(14); by amending in newly redesignated paragraph (10), paragraphs (1)-(5) as paragraphs (i)-(v); by amending in newly redesignated paragraph (10)(v), paragraphs (i)-(iii) as paragraphs (A)-(C); by amending in newly redesignated paragraph (11), paragraphs (1)-(3) as paragraphs (i)-(iii); by amending in newly redesignated paragraph (13), paragraphs (1)-(3) as paragraphs (i)-(iii), and in newly redesignated paragraph (13)(ii), paragraphs (i)-(iii) as paragraphs (A)-(C); by adding a new paragraph (b); and by removing the parenthetical statement at the end of the section text. In § 57.3105, newly redesignated paragraph (a)(11) is amended by removing "(j)" and inserting "(a)(10)." Additionally, in § 57.3105, the phrase "general internal medicine or" is revised to read "general internal medicine and/or" in newly redesignated paragraphs (a)(3), (a)(5), (a)(6), (a)(10), (a)(10)(iii), (a)(10)(iv), (a)(10)(v)(A), (a)(12), and (a)(13)(ii)(C).

§ 57.3105 Project requirements.

(b) For each faculty development program, a project must:

(1) Have a project director who is employed by the grantee or training institution, has relevant training and experience, and has been approved by the Secretary to direct the project;

(2) Have an appropriate administrative and organizational plan and appropriate faculty, staff and facility resources to achieve the stated objectives;

(3) Have a curriculum which:

(i) Directly applies to general internal medicine and/or general pediatrics,

(ii) Emphasizes improvement of pedagogical skills and techniques for clinical teaching in classroom and ambulatory health care settings, and

(iii) Uses structured didactic and experiential teaching strategies.

(iv) With respect to training programs of 9 or more months duration, the curriculum must also include:

(A) A research component, with a research project to be completed by each trainee, and

(B) An administrative component which addresses the non-teaching roles and functions of faculty;

(4) Systematically evaluate the educational program, including trainees and faculty, the administration of the program, and the degree to which the program and educational objectives are met;

(5) Have a trainees only physicians who teach or plan teaching careers in general internal medicine and/or general pediatrics;

(6) To be eligible for stipend support from grant funds, a trainee must:

(i) Be a general internist or a general pediatrician.

(ii) Intend to teach in a general internal medicine and/or general pediatrics program on a full-time basis.

(iii) Be a full-time participant in the training project for at least 3 months, and

(iv) Receive less than full institutional salary during the period of Federal support of stipends; and

(7) Stipend support from grant funds may be no longer than 24 cumulative months for any trainee.

8. Section 57.3106 is amended by removing the period at the end of the sentence in paragraph (a)(4) and inserting a semicolon and the word "and"; by adding a new paragraph (a)(5); and by revising paragraph (b) to read as follows:

¹ Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

§ 57.3106 How will applications be evaluated?

(a) * * *

(5) For faculty development programs, the applicant must demonstrate the institution's commitment to general internal medicine and/or general pediatrics as defined under § 57.3102.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary shall give priority to applicants that demonstrate a commitment to general internal medicine and general pediatrics in their medical education training programs. However, should specific needs warrant, the Secretary will consider any other special factors relating to national needs as the Secretary may from time to time announce in the *Federal Register*.

9. Section 57.3107 is amended by removing paragraph (d), and by revising paragraph (c) to read as follows:

§ 57.3107 How long does grant support last?

* * * * *

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

10. Section 57.3109 is amended by adding a new paragraph (c) to read as follows:

§ 57.3109 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds provided and made available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts provided by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

11. Section 57.3111 is amended by adding the following parenthetical

statement at the end of the section text to read as follows:

§ 57.3111 What other audit and inspection requirements apply to grantees?

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060.)

[FR Doc. 88-9779 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR**Office of the Secretary****43 CFR Part 11****Natural Resource Damage Assessments**

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) intends to begin the review of the natural resource damage assessment regulations promulgated as a final rule on August 1, 1986, and codified at 43 CFR Part 11. The natural resource damage assessment regulations were developed pursuant to section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c)(3) of CERCLA requires that the regulations be reviewed by the Department every two years and revised as appropriate.

The Department has promulgated two types of assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (type A procedures); and procedures for complex assessments (type B procedures). The August 1, 1986, final rule contains the general administrative process and the type B assessment procedures. To meet the two-year review requirement of CERCLA, the Department is now requesting public comments on experience gained with the type B procedures and the overall administrative process contained in the regulations. At a later date, the Department will issue a separate advance notice of proposed rulemaking for comments on experience with the type A procedures.

If it is determined, after review of comments received in response to this Advance Notice of Proposed Rulemaking, that the August 1, 1986, final rule should be revised, a Notice of Proposed Rulemaking will be published in the *Federal Register*.

DATE: Comments will be accepted through July 5, 1988.

ADDRESS: Office of Environmental Project Review, ATTN: NRDA Regulations, Room 4239, Department of the Interior, 1801 C Street NW., Washington, DC 20240 (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343-1301.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act).

Section 107 of CERCLA provides that, in addition to cost-recovery for response and cleanup actions, natural resource trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under sections 107(f) and 111(b) of CERCLA. Indian tribes may commence an action as natural resource trustees under section 126(d). Federal natural resource trustees are designated by Executive Order 12580 and the National Contingency Plan (NCP). They are, in general, those departments and agencies that have natural resources or land management responsibilities. State natural resource trustees are State officials designated by the Governors. These State designations are reported to the Administrator of the U.S. Environmental Protection Agency (EPA). Natural resources are defined by CERCLA to be: Land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established under the Magnuson Fishery Conservation and Management Act of 1976), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust

restriction on alienation, any member of an Indian tribe. The damage that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance.

Section 301(c), revised by the Superfund Amendments and Reauthorization Act of 1986 (SARA), calls for the natural resource damage assessment regulations in the following terms:

(c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under Section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.

(2) Such regulations shall specify: (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

Executive Order 12316 of August 14, 1981, replaced by Executive Order 12580 of January 23, 1987, delegated the responsibilities contained in section 301(c) to the Secretary of the Interior. On August 1, 1986 (51 FR 27674), the Department published a final rule that provides the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases, otherwise known as the "type B" procedures. A notice was issued on November 16, 1987 (52 FR 43763), announcing the availability of five final type B technical information documents that were prepared in conjunction with the development of the type B assessment procedures. On March 20, 1987 (52 FR 9042), the Department

published a final rule that contains the standard procedures for simplified assessments, known as the "type A" procedures. The type A procedure in that final rule is for use in coastal and marine environments and includes the use of a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). On February 22, 1988 (53 FR 5166), the Department published a final rule to amend 43 CFR Part 11 to conform with amendments to CERCLA brought about by SARA. Finally, on March 25, 1988, the Department published technical corrections to the NRDAM/CME (53 FR 9769). These rules together comprise the natural resource damage assessment regulations, codified at 43 CFR Part 11. Section 107(f)(2)(C) of CERCLA provides that natural resource damage assessments performed by Federal or State trustees in accordance with the regulations promulgated under section 301(c) of CERCLA are provided the legal evidentiary status of a rebuttable presumption in an administrative or judicial proceeding.

II. Discussion

In order to carry out the statutory requirement that the natural resource damage assessment regulations be reviewed and revised as appropriate every two years, the Department is seeking public comment reflecting experience with the general assessment process and the type B procedures. Because the type A procedures were developed later and there is less experience with these procedures, the Department will begin the review of the type A procedures at a later date.

Over the course of developing the general assessment process and the type B procedures, beginning with the Advance Notice of Proposed Rulemaking published in January of 1983 (see 48 FR 1084), the Department already has received many comments on the natural resource damage assessment regulations. Comments specific to the general assessment process and the type B procedures were received on the proposed type B rule published in December 1985 (see 51 FR 27674). These comments were helpful in developing the assessment process and the type B procedures. The Department's response to these comments can be found in the preamble to the final type B rule published in August 1986 (see 51 FR 27674). The Department is now asking for information based specifically on experience with application of the general administrative process, the type B assessment procedures, and the type B technical information documents. As

well, the Department is requesting information drawn from any new technology not available when the regulations were developed. Comments should focus on all Subparts of 43 CFR Part 11 except Subpart D and §§ 11.31 and 11.33 of Subpart C, which pertain to the type A procedures.

For reference in preparing comments, the Department is providing a brief summary of the rule. It should be noted that the natural resource trustee has the option of using the rules or of performing an assessment based on some other procedure. However, assessments performed by Federal or State natural resource trustees following the rules are granted the legal evidentiary status of a rebuttable presumption in an administrative or judicial proceeding. The rules, as codified at 43 CFR Part 11, use a planned and phased approach to the assessment of natural resource damages. This approach is designed to ensure that all procedures used in an assessment, performed pursuant to the rule, are appropriate, necessary, and sufficient to assess damages for injuries to natural resources. The major phases in the assessment process are: (1) The Preassessment phase; (2) the Assessment Plan phase; (3) the Assessment phase, which in turn consists of the Injury Determination, Quantification, and Damage Determination phases; and (4) the Post-assessment phase. The discussion that follows describes the progression of these phases through a type B assessment.

The Preassessment phase usually begins with the notification to the natural resource trustee of a discharge or release, although it may begin with the detection by the natural resource trustee of a discharge or release. During the Preassessment phase, the trustee must perform a preassessment screen to establish that a CERCLA or CWA-covered incident has occurred and that resources of the trustee may have been affected. A Preassessment Screen Determination is required to determine whether to proceed with further assessment actions. Provisions are made for temporary actions to prevent or reduce injury to the natural resources, that is, emergency restoration actions as authorized by section 111(i) of CERCLA.

If the Preassessment Screen Determination indicates that further actions are warranted, the trustee may proceed to the Assessment Plan phase. The trustee must develop an Assessment Plan before initiating an assessment. The trustee is also required to coordinate with other co-trustees, to make reasonable effort to identify and

involve the potentially responsible party, and to offer the public an opportunity to review, prior to implementation, the Assessment Plan. A trustee must make a confirmation of exposure documenting that at least one natural resource has been exposed to the substance discharged or released. The trustee must also make an Economic Methodology Determination to estimate whether to base the assessment on the lesser of restoration costs or diminution of use values. The Assessment Plan must document all decisions on the methodologies selected, including, but not limited to, parameter values, sampling sites, and assumptions used to implement the methodologies. The Plan must include such documentation because one of the purposes of this Plan is to ensure that the assessment cost will be "reasonable."

After the trustee develops the Assessment Plan, he may proceed with the assessment phase consisting of: The Injury Determination phase; the Quantification phase; and the Damage Determination phase. For injury determination the trustee focuses on whether an injury to a resource has occurred and that any injury so determined did result from the discharge or release. The rule provides both a general definition of injury and resource-specific definition. In order to proceed, at least one resource must be found to have been injured based on these resource-specific injury definitions, and a pathway of contamination must be established that links the injury to the discharge or release. After the injury determination, the rule calls for a mandatory review of the Assessment Plan, including consideration of both the initial Plan and the initial decision on the lesser of restoration costs or diminution of use values.

If the trustee has established that a resource has been injured, the next part of the assessment is to quantify the effects of the injury in terms of the change in the services that the resource had provided. Services that resources provide include, for example, fish or wildlife habitat, recreation, or erosion control. The assessment establishes a baseline condition of the resource service that existed prior to the injury attributable to the discharge or release and determines the reduction in services that resulted from the discharge or release. The ability of the injured resources to recover is also determined in terms of the amount of time necessary for the resource services to recover to baseline conditions. This quantification

is closely related to the following steps in the type B assessment, the damage determination.

Damage determination focuses on the economic valuation of the change in services provided by the injured resource, taking into account cleanup actions taken or planned. In damage determination, the trustee calculates the monetary compensation for injury, based on the lesser of the restoration or replacement costs, or the diminution in use value of the resource.

When the natural resource damage assessment is complete, several post-assessment actions are required. A Report of Assessment is compiled that includes the documentation of all determinations made during the assessment, data collected, and test results. The Report of Assessment becomes the administrative record of the natural resource damage assessment. The trustee then presents a demand for damages to the potentially responsible party (PRP), and the PRP has the opportunity to respond to the demand. Any damage awards are to be placed in a separate account for use by the trustee to restore or replace the natural resources injured by the discharge or release. The trustee must develop a Restoration Plan to document the actions that are planned to restore or replace the injured resource. The Plan must be developed based on the amount of the damage award, whether the award was based on restoration costs or diminution of use values.

III. Conclusion

The Department is seeking comments based on experiences in applying the general administrative process and the type B procedures outlined in the rule, which are described above. Comments should address the following, although not necessarily be limited to these questions: (1) Where and how have the assessment process and the type B procedures been applied, for example, geographical location, environmental setting, etc.; (2) How effective was the assessment process in these applications?; (3) In what type of situation has the assessment process been used, for example, in settlement negotiations, court actions, etc.; (4) What are recommendations for modification of the assessment process and the type B procedures based on the applications mentioned above?; and (5) How effective has the process been pertaining to restorations and the ability to apply funds recovered towards planned restoration activities?

Also, the Department is asking for any relevant information not available at the time the type B procedures were

developed. Section 301(c) of CERCLA states that such regulations shall identify the "best available" procedures to determine damages to natural resources. In order to ensure that the type B procedures are the "best available" procedures, the Department wants to know of any new methodologies or protocols that might be incorporated into the type B procedures. For example, new methodologies or technical information may exist in such areas as defining injuries to the resources and determining the extent of and compensation for the injury.

Dated: April 28, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-9758 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-RG-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Gen. Docket No. 84-467; FCC 88-82]

Radio Broadcasting Services; Expanded Band (1605-1705 kHz)

AGENCY: Federal Communications Commission.

ACTION: Third report; availability of proposed recommendations.

SUMMARY: In response to the *Third Notice of Inquiry*, and through other preparatory activities for the Second Session of the Regional Administrative Radio Conference (RARC-86) on the expansion of the AM band from 1605 kHz to 1705 kHz, the Commission adopted the *Third Report* containing its recommendations for U.S. proposals to the Conference. The FCC recommendations contain proposed text for the Final Acts of the Conference, including the Regional agreement and technical annexes. The draft text will be submitted to the State Department and upon adoption as a U.S. proposal will be forwarded to Geneva for distribution to the various administrations in Region 2 (the Western Hemisphere). The intended effect of this action is to expedite the implementation of broadcasting in the expanded band.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Policy and Rules Division, Mass Media Bureau (202) 254-3394; and John Boursy, Audio Services Division, Mass Media Bureau (202) 634-6315.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report*, in Gen. Docket No. 84-467, FCC 88-82, adopted February 26, 1988, and released April 22, 1988.

The full text of this Commission document 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 *Third Report* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Third Report

1. In order to prepare for the Second Session of the Regional Administrative Radio Conference on the expansion of the AM band from 1605 kHz to 1705 kHz, the Commission adopts this *Third Report*. It is based on comments filed in response to a *Third Notice of Inquiry* (52 FR 27570, July 22, 1987), and other information garnered through conference preparatory activities taking place during the period between the first and second sessions of the conference.

2. One of the principal tasks of the Conference, which is scheduled to take place in Rio de Janeiro from May 23 to June 9, 1988, is to develop a plan for the broadcast use of the band. At the First Session, it was decided to use an allotment planning method which makes designated frequencies available for use anywhere within a specified area; whereas, under an assignment plan, an assignment for each station is entered into the plan with a specific location, power and other pertinent characteristics. Allotment planning offers flexibility while helping to ensure an efficient and equitable distribution of channels. It avoids the need to identify specific requirements and because it deals with allotments rather than specific assignments, an allotment plan protects future rights without the need to identify them in advance.

3. Because of the enlargement of the scope of the Second Session to include non-broadcast as well as broadcast uses of the expanded band, there is a need to make several changes to the draft text of the final agreement adopted at the First Session. The issue of the text was discussed internationally at the Lima meeting of CITEL PTC II, and a revised draft text was considered. Although no decision was made regarding this text, it met with general support by the countries attending the CITEL meeting. The Commission believes that this text with minor revisions is appropriate for adoption at the Second Session of the Conference. Accordingly, it will be

included in the draft text for the Final Acts of the Conference that the FCC is recommending as a United States proposal to the Second Session.

4. The Report discussed two technical issues not resolved by the First Session: The relationship between physical and electrical antenna heights and the sharing of the band between broadcast and non-broadcast uses. As to the former, considerable study has been given to this topic by the Radio Advisory Committee and by the CCIR. The purpose of these studies was to determine whether it would be possible to develop a more accurate assessment of an AM tower's electrical height than that currently in use in Region 2. Based on these studies, we believe that the asserted correlation between physical heights and electrical heights does not exist. After discussion of this issue at a CITEL PTC II meeting, there was agreement that this subject was not a practical one for resolution by the Conference and that electrical height in the band 1605-1705 kHz should be based upon "free space" calculations as is the case in the band 535-1605 kHz.

5. Another technical matter left for resolution at the Second Session of the Conference is the subject of "sharing criteria." At the present time, in Region 2, the band 1605-1705 kHz is allocated to the fixed, mobile and aeronautical radionavigation services on a primary basis and to the radiolocation service on a secondary basis. However, effective on a date to be decided by the Expanded Band Conference, the band 1605-1625 kHz has been allocated to the broadcasting service on an exclusive basis and the band 1625-1705 kHz has been allocated to the broadcasting service on a primary basis, to the fixed and mobile services on a permitted basis and to the radiolocation service on a secondary basis. Although most countries in the Region intend to use the band for broadcasting, some intend to continue (or even add) non-broadcast uses. As a consequence, it is necessary to develop sharing criteria so that these non-broadcast uses do not cause a derogation in the broadcasting Plan to be adopted. The CCIR has investigated this matter and its report to the Second Session of the Conference will be considered when the Conference makes its decisions in this area. It is the FCC's tentative conclusion that non-broadcast uses should be protected to a quality of service equivalent to "marginal commercial quality". This would ensure the continued utility of such non-broadcast uses without imposing excessive constraints upon the broadcast service.

6. The treatment of Travelers Information Stations (TIS) was also of concern throughout the various stages of this proceeding. Under current regulation, TIS stations operate on 1610 kHz (also on 530 kHz) which is outside the 535-1605 kHz AM broadcast band, a situation which will change with expansion of the AM band. Not only is it not feasible to maintain TIS on 1610 kHz once the AM band is expanded, but without international interference protection from new broadcast stations, TIS operations would not be able to provide effective service on 1610 kHz. Therefore, the Commission found the most feasible approach appears to involve the use of 1700 kHz for TIS. Any interference protection for TIS will be derived from the allotment Plan adopted by the Conference. Nonetheless, effective coordination with Canada and Mexico is essential and can help maximize the opportunity for these stations to offer effective service.

7. Finally, we note that the bulk of the work at the Second Session of the Conference will be devoted to the development of a regional plan for broadcast use of the expanded band. Current planning will be framed in terms of the effect of one allotment on other allotments. For these purposes, we have adopted standardized separations between co-channel allotment areas. To make the best use of this approach, it is necessary to apply a "pairing" concept, that is the idea that a frequency can be reused at a closer geographic distance than otherwise would be possible in the absence of "pairing".

8. At the Second Session it also will be necessary to take adjacent channel considerations (especially first adjacent) into account as frequencies are allotted. Since a fully automated approach to taking adjacent channels into account (analogous to the co-channel situation) has not been found, it will not be possible to eliminate all first adjacent channel relationships between all geographically adjacent countries. However, we anticipate that the development of the Plan at the Second Session can avoid the potential for many first adjacent channel incompatibilities between countries by judicious assignment of frequencies. Nevertheless, where incompatibilities remain, it will be necessary to handle them via bilateral and/or multilateral agreements between and/or among the affected countries.

9. In the event that agreements resolving some or all incompatibilities do not exist, the Commission believes the most appropriate and effective manner of resolving these situations

would be a provision to the effect that when coordination has not been successfully affected with respect to the probability of harmful interference, on examination of notices of frequency assignments, the IFRB will take into account the frequency assignments for transmission or reception already recorded in the Master International Frequency Register.

Authority Citation

10. Authority for the action taken is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C 154(i) and 303.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9598 Filed 5-2-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Atlantic Billfishes; Withdrawal of Availability of a Fishery Management Plan

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

ACTION: Notice of withdrawal of a notice of availability of a fishery management plan.

SUMMARY: NOAA issues this notice to inform the public that the South Atlantic Fishery Management Council withdraws from review by the Secretary of Commerce the Fishery Management Plan for Atlantic Billfishes (FMP) and a proposed rule to implement it. A notice of availability of the FMP with request for comments, appeared in the *Federal Register* on April 6, 1988 (53 FR 11321).

The FMP was prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils, and was submitted for Secretarial review.

Technical changes being made to the economic analysis in the regulatory impact review section of the FMP warrant withdrawing the FMP from Secretarial review and withholding publication of a proposed rule at this time. When the revised FMP is resubmitted by the Councils for Secretarial review, another notice of availability will be published.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton (Plan Coordinator), 813-893-3722.

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

Dated: April 26, 1988.

Richard H. Schaefer,

Director, Office of Fishery Conservation and Management.

[FR Doc. 88-9759 Filed 5-2-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 85

Tuesday, May 3, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-044]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Disease-Tolerant Tomato Plants

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 have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing of genetically engineered tomato plants, designed to be tolerant to tobacco mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has 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 Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment

and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7769, or write her at this same address. The environmental assessment should be requested under accession number 87-329-01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published in a final rule in the Federal Register (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced into the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to tobacco mosaic virus. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination

and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the tobacco mosaic virus coat (capsid) protein has been inserted into a tomato chromosome. In nature, the genetic material contained in a plant chromosome can only be transferred to another sexually compatible plant via cross-pollination. In this field trial, the inserted gene cannot spread to any other plants by cross-pollination, because the field test plot is located at a sufficient distance from any sexually compatible plants with which the genetically engineered tomato plants could cross-pollinate.

2. While the tobacco mosaic virus is a plant pest, neither the tobacco mosaic virus coat (capsid) protein gene itself, nor its derived gene product, confer on tomato any plant pathogenic characteristic.

3. The vector used to transfer the tobacco mosaic virus coat (capsid) protein gene into a tomato chromosome has been evaluated for its use in this experiment. The vector has been derived from a DNA sequence with known plant pathogenic potential, but has been disarmed. Phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to susceptible plants.

4. The vector agent, the bacterium that was used to deliver the vector DNA, has been shown to be eliminated and no longer associated with the transformed tomato plants.

5. Horizontal movement of the introduced genes to another organism is not possible. The vector acts by delivering the gene to the tomato genome where it is stably inserted into the tomato chromosomal DNA. The

vector does not survive alone in the transformed plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

6. The size of the field test plot is approximately 0.2 acre and will be located in the center of a large research farm. The field test plot is surrounded by irrigation canals approximately 20 feet wide on 3 sides and a chain-linked fence on the 4th side. The level of physical containment to prevent any unintentional release into the environment has been found to be adequate.

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. 4321 *et seq.*); (2) Regulations of the Council on 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 27 day of April, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9724 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Designation Renewal of the State of Alaska (AK) and the Memphis Agency (TN)

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

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Alaska Department of Natural Resources, Division of Agriculture (Alaska), and Memphis Grain and Hay Association (Memphis), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: June 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Alaska's and Memphis' designations terminate on May 31, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the December 7, 1987, *Federal Register* (52 FR 46384). Applications were to be postmarked by January 4, 1988. Alaska and Memphis were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant names in the February 2, 1988, *Federal Register* (53 FR 2861) and requested comments on the applicants' designation. Comments were to be postmarked by March 18, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Alaska and Memphis are able to provide official services in the geographic area for which the Service is renewing their designation. Effective June 1, 1988, and terminating May 31, 1991, Alaska and Memphis will provide official inspection services in their entire specified geographic area, previously described in the December 7 *Federal Register*.

Interested persons may obtain official services by contacting the agencies at the following addresses: Alaska, at P.O. Box 949, Palmer, AK 99645; and Memphis, located at 1390 Channel Avenue, Memphis, TN 38113.

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

Date: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-9712 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Denver (CO) and East Indiana (IN) Agencies, and the State of Kansas (KS)

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

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and Kansas State Grain Inspection Department (Kansas).

DATE: Comments to be postmarked on or before June 20, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090-6454. Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail. Telex users may respond as follows: To: Lewis Lebakken. TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within a specified geographic area in the March 1, 1988, *Federal Register* (53 FR 6168). Applications were to be postmarked by March 31, 1988. Denver and Kansas were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency. There were two applications for the East Indiana designation; East Indiana applied for designation renewal in the entire area currently assigned to that agency, except for Williams County, Ohio, and a neighboring official agency, Lima Grain Inspection Service Inc., applied for designation only in that County.

This notice provides interested persons the opportunity to present their comments concerning the applicant's designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

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

Date: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-9715 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Los Angeles (CA) and Peoria (IL) Agencies

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

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designation shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Los Angeles Grain Inspection Services, Inc. (Los Angeles), and Peoria Grain Inspection Service, Inc. (Peoria).

DATE: Applications to be postmarked on or before June 6, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this section.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Los Angeles, located at 1625 Bluff Road, Montebello, CA 90640; and Peoria, located at 330 SW Washington Street, 2nd Floor, Peoria, IL 61602; were such designated under the Act as an official agency to provide inspection functions on November 1, 1985.

Each official agency's designation terminates on October 31, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Los Angeles, in the State of California, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Peoria, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Stark County line to Marshall County; the northern Marshall County line to Putnam County; the western Putnam County line north to State Route 29; State Route 29 north to Interstate 180; Interstate 180 east to State Route 26;

Bounded on the East by State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 southeast to State Route 121; State Route 121 south to State Route 10;

Bounded on the South by State Route 10 west to Mason County; the eastern and southern Mason County lines west to the Illinois River; the Illinois River northeast to Fulton County; the southern Fulton County line; and

Bounded on the West by the western and northern Fulton County lines to Peoria County; the western Peoria and Stark County lines.

Interested parties, including Los Angeles and Peoria, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning November 1, 1988, and ending October 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

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

Date: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-9714 Filed 4-2-88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Little Rock, AR, Area

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

ACTION: Notice.

SUMMARY: This notice announces that the Service has determined that the designation of Little Rock Grain Exchange Trust (Little Rock) will not be renewed. The Service is again requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended (Act) in the area serviced by Little Rock.

DATE: Applications to be postmarked on or before June 6, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Little Rock's designation terminates on May 31, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the December 7, 1987, *Federal Register* (52 FR 46384).

Applications were to be postmarked by January 4, 1988. Little Rock was the only applicant for designation and it applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the February 2, 1987, *Federal Register* (53 FR 2861) and requested comments on the applicant's designation. Comments were to be postmarked by March 18, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that, pursuant to section 7(g)(1) of the Act, Little Rock's designation will not be renewed. In accordance with the Act and regulations, the designation of Little Rock will terminate on May 31, 1988.

The Service is again requesting applications for designation to provide official services in the specified geographic area.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area, in the States of Arkansas and Texas, which may be assigned to the applicant selected for designation is as follows:

In Arkansas:

Bounded on the North by the northern Arkansas State line from the western Benton County line east to the eastern Clay County line;

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller County line; and

Bounded on the West by the western Arkansas State line from the southern

Miller County line north to the northern Benton County line.

In Texas: Bowie and Cass Counties.

An exception to the described geographic area is the following location inside the area which has been and will continue to be serviced by the following official agency:

Memphis Grain and Hay Association; Lockhart-Coleman Grain Company, Augusta, Woodruff County, Arkansas.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, designation in the specified geographic area is for a period not to exceed 3 years. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Persons or firms located in this geographic area requiring official inspection service should contact the FGIS Stuttgart Field Office at (501) 673-2508 to obtain such service beginning June 1, 1988, until such time as an applicant is designated to perform official services.

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

Date: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-9713 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-EN-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Idaho

The Statewide central filing system of Idaho has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Pete T. Canarrusa, Secretary of State, for farm products produced in that State (51 FR 34236, September 26, 1986 and 51 FR 36257, October 9, 1986).

The same system is hereby certified on the basis of information submitted by

Pete T. Canarrusa, Secretary of State, for additional farm products produced in that State as follows: Onion seed, Garlic, Radishes.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

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

Dated: April 27, 1988.

B.H. (Bill) Jones,
Administrator, Packers and Stockyards Administration.

[FR Doc. 88-9719 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-KD-M

Amendment to Certification of Central Filing System; Louisiana

The Statewide central filing system of Louisiana has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Bob Odom, Commissioner of Agriculture, for farm products produced in that State (51 FR 47036, December 30, 1986).

The same system is hereby certified on the basis of information submitted by the Louisiana Department of Agriculture & Forestry for an additional farm product produced in that State as follows:

Broccoli.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

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

Dated: April 27, 1988.

B.H. (Bill) Jones,
Administrator, Packers and Stockyards Administration.

[FR Doc. 88-9720 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-KO-M

Soil Conservation Service

Upper Contentnea Creek Watershed, Franklin, Johnston, Nash, Wake and Wilson Counties, NC

AGENCIES: North Carolina Department of Natural Resources and Community Development and the United States Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40

CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development and the Soil Conservation Service, United States Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Upper Contentnea Creek Watershed, Franklin, Johnston, Nash, Wake and Wilson Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: David W. Sides, Director, Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611, Telephone (919) 733-2302 or Bobbye J. Jones, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Room 535, Fifth Floor, Federal Building, Raleigh, North Carolina 27601, Telephone (919) 790-2888.

SUPPLEMENTARY INFORMATION: The Environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 14,400 acres of cropland.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David W. Sides.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Date: April 22, 1988.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 88-9689 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

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

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

Agency: Office of the Secretary, Procurement and Administrative Services.

Title: Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs.

Form Number: Agency—NA; OMB—0605-0020.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 0 respondents; 1 reporting hours

Needs and Uses: Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, each Federal agency is required to establish regulations to ensure that persons displaced by the Federal Acquisition of their real property are compensated for the acquisition. Commerce has had no acquisition or relocation activities for the past several years, but is clearing at least 1 hour in the event of future activity.

Affected Public: Individuals or households, businesses or other for-profit institutions, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3008 New Executive Office Building, Washington, DC 20503.

Dated: April 28, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-9780 Filed 5-2-88; 8:45 am]

BILLING CODE 3510-CW-M

Patent and Trademark Office

Advisory Committee for Patents and Trademarks; Open Meeting

AGENCY: Patent and Trademark Office, Commerce.

SUMMARY: The Committee was established on December 17, 1986, to advise the Patent and Trademark Office on domestic and foreign patent issues, international trademark matters, the Administration of the Office, and its office-wide automation program.

TIME AND PLACE: May 20, 1988, from 9:00 a.m. to 4:30 p.m. The Committee will meet in the Commissioner's Conference Room at the Patent and Trademark Office, Crystal Park 2, Room 912, in Crystal City, Arlington, VA.

AGENDA: (1) Public Access to Automated Search File. (2) Education Outreach—Project XL.

PUBLIC OBSERVATION: The meeting will be open to public observation; approximately 12 seats will be available for the public on a first-come, first-served basis. If time permits, oral comments by the public of no more than three minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

FOR FURTHER INFORMATION CONTACT: Donald G. Kelly, Executive Assistant to the Assistant Secretary, Crystal Park 2, Suite 906, Patent and Trademark Office, Washington, DC 20231. Telephone: 703/557-3071.

Date: April 26, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-9744 Filed 5-2-88; 8:45 am]

BILLING CODE 3510-16-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts next scheduled meeting is Thursday, May 19, 1988 at 10 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC

including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, April 25, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88-9787 Filed 5-2-88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile and Textile Products Produced or Manufactured in Peru

April 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits for the new agreement year.

EFFECTIVE DATE: May 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Textile Agreement between the Governments of the United States and Peru is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 27, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Peru and exported during the twelve-month period beginning on May 1, 1988 and extending through April 30, 1989, in excess of the following restraint limits:

Category	12-mo. restraint limit
219.....	26,312,017 square yds.
220.....	12,975,789 square yds.
226/313.....	24,996,370 square yds of which not more than 3,558,118 square yds shall be in Category 226.
300.....	3,000,000 pds.
301.....	2,250,000 pds.
315.....	4,718,866 square yds.
317/326.....	19,845,739 square yds. of which not more than 6,014,574 square yds. shall be in Category 326.
Cotton	
Apparel	
Group:	
330-359,	10,000,000 square yds. equivalent.
as a	
group.	
Sublevel	
within the	
Group:	
338/339.....	515,205 doz. of which not more than 343,470 doz. shall be in Categories 338-S/339-S ¹ .
Wool Group:	
400-469,	4,000,000 square yds. equivalent.
as a	
group.	
Sublevel	
within the	
Group:	
410.....	1,500,000 square yds.

¹ Categories 338-S/339-S, only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924, 384.0216,

384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970 and 384.3437 in Category 338; and 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339.

Trade falling into the category limit for the periods May 1, 1987 through December 31, 1987 and January 1, 1988 through April 30, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment in the future under the provisions of the bilateral agreement between the Governments of the United States and Peru.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-9697 Filed 5-2-88; 8:45 am]

BILLING CODE 3510-DR-M

Requirements for Participation in the Special Regime Under U.S.-Mexico Textile Agreement

April 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice of requirements for participation in the Special Regime under the U.S.-Mexico textile agreement.

Authority: Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), as amended; Executive Order 11561 (March 3, 1975).

Background

On February 17, 1988, the Government of the United States and the Government of Mexico entered into a new textile agreement, effective January 1, 1988. Under the terms of that agreement, a Special Regime was established under which a number of categories were placed under quotas which distinguish between Mexican products produced from foreign fabric and Mexican products assembled from U.S. formed and cut fabrics. In essence, each category has a sublimit for products that are not assembled from U.S. formed and cut fabrics. A copy of the bilateral agreement is available from

the Textiles Division, Economic Bureau, U.S. Department of State, 202-647-1998.

To implement the Special Regime, the Committee for the Implementation of Textile Agreements (CITA) has determined that it is necessary to require that (1) the same firm act as both exporter of the cut fabric parts to Mexico and importer into the United States of the assembled products made from those parts, (2) participating firms complete a Form ITA-370P (described below), and (3) all exportations and importations under the Special Regime be completed at a Customs port on the U.S.-Mexico border. The U.S. Customs Service is directed to determine whether the requirements set forth in this notice are met and to charge all products subject to the Special Regime to the applicable quota.

Completion of Form ITA-370P

Form ITA-370P was originally designed for use in connection with the Special Access Program for Caribbean Basin countries. It is expected that the form will be revised to delete all references to the Caribbean. Pending such revisions, the form's references to Caribbean countries should be disregarded. Copies of Form ITA-370P are available from the Government Printing Office, Washington, DC, telephone 202-783-3238, stock number 003-009-00505-1, at a cost of \$29 per 100 copies.

Form ITA-370P is a three-part document with two pre-carboned copies. Each part of the document, the Shipper's Declaration, Assembler's Declaration, and the Importer's Declaration, is in the form of a certification which must be completed and signed. Falsification of a certification will subject the certifying officer and the participating firm to criminal and civil penalties. Such penalties are authorized under 18 U.S.C. 1001 and 19 U.S.C. 1592. See also § 162.70, *et seq.*, Customs Regulations (19 CFR 162.70 *et seq.*).

Participation in the Special Regime and treatment of merchandise under the Special Regime are strictly subject to fulfillment of the requirements of the Special Regime. The form therefore states that firms found to have falsified certifications may be precluded from future participation in the Special Regime.

The Shipper's Declaration

At the time of exportation to Mexico of fabric parts from the United States, firms intending these goods to be treated under the Special Regime must present to the U.S. Customs Service a Form ITA-370P with a completed Shipper's Declaration. Form ITA-370P instructs

the shipper to retain invoices establishing that the fabric components are U.S. formed and cut and to describe the parts being exported, "including the weight and quantity of parts, the fabric, including fabric weight, yarn size, thread count, fiber content, pattern, and color and the U.S. manufacturer(s) of the fabric and the U.S. firm cutting the fabric."

It is the understanding of CITA and of the Customs Service that it may not be possible for all firms to supply all of the detail listed above. Some information may not be available or necessary in all instances. The purpose of the description requirement is to permit Customs inspectors to conduct a visual inspection of the fabric parts and compare it with the written description to determine whether the exported parts are what they purport to be. Thus, firms should include as much detail as possible, either on the form itself, if there is sufficient space, or by attached invoices, other documentation, or a continuation sheet. Firms need not attach invoices if they sufficiently describe the merchandise on the form, although documentation of U.S. origin, such as invoices, cutting documents, or signed affidavits by suppliers, must be retained in a firm's files. Signed affidavits by suppliers should be retained if invoices or cutting tickets are not available.

Vertically integrated firms, i.e., firms which both form and cut fabric, should retain an internal transfer document or other documentary proof that they formed the fabric in the United States. These invoices or internal transfer documents must comply with the requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.* and the Federal Trade Commission Rules and Regulations thereunder, 16 CFR Part 303, and identify the fabric as entirely formed in the United States. See Rule 33 of the Federal Trade Commission regulations (16 CFR 303.31).

If documents are attached to Form ITA-370P, either to provide additional proof of U.S. origin or because of insufficient space on the form, information should be included on the form identifying and explaining the attachments. These documents should be stapled to the form and include some identification tying them to that particular form.

Firms may provide total weight for all fabric parts for each style, rather than listing the weight for each of the components being exported. It is recommended that firms provide explanatory information in instances where terminology is not generally

recognized. For example, instead of listing a color as "bermuda," a firm should include a definition of that color, such as "purple."

At the time of exportation, the Customs port will verify the form by assigning it a four-digit control number and signing it. The Customs port will retain the original (top) copy of the form and forward that copy to the appropriate district office. A second copy of the form will be retained by the port of export and the third copy is to accompany the cut parts to Mexico. Any number of copies of the form may be made once the Shipper's Declaration portion of the form has been completed and Customs has signed the form and assigned a control number.

The Assembler's Declaration

For each shipment of parts that has been assembled in Mexico and is ready to be exported to the United States, the assembler will complete the Assembler's Declaration portion of form ITA-370P.

The Importer's Declaration

At the time of entry into the United States of the assembled goods, the U.S. importer must have completed the Importer's Declaration portion of form ITA-370P, certifying the quantity and products assembled from the U.S. formed and cut fabric, and must present it to the Customs port of entry as part of the entry package. The entry package also must contain a valid visa, as required under the terms of the agreement with Mexico, and a country of origin textile declaration, in accordance with § 12.130, Customs Regulations (19 CFR 12.130).

The port of importation will contact the district office to determine whether entry may be permitted against the particular form. Merchandise will be eligible for entry under the following conditions: (1) If the shipper of the cut parts and the importer of the assembled products are the same firm; (2) the port determines that an original verified form is on file with the district office; (3) the port determines from the district office that entries may be made against the quantity indicated on the form; and (4) the port determines that all other entry requirements are met.

Signatures on Form ITA-370P

The Shipper's Declaration portion of the form must be signed by a "responsible manager" of the exporting firm. The Importer's Declaration may be signed by either a "responsible manager" of the firm or by the "responsible agent" for the firm. In each instance, the person signing must be

knowledgeable about the shipment and acting on behalf of the firm participating in the Special Regime. Facsimile signatures are acceptable in both instances under the following conditions: A firm wishing to use facsimile signatures for the Shipper's Declaration must submit a letter of intent to the Customs Service ports of export and to any anticipated ports of import. A firm wishing to use facsimile signatures for the Importer's Declaration must submit a letter of intent to any anticipated ports of importation. The letters should contain both an original and a facsimile signature. Customs will keep the letters on file for reference on Special Regime shipments by these firms. In no case will a copy of a signature be accepted. A facsimile signature will not be accepted for the Assembler's Declaration.

Multiple Styles or Categories

A single form ITA-370P may be used for multiple styles, multiple categories, and multiple fabrics, patterns or colors of assembled products. For example, a single form ITA-370P may accompany a shipment that includes two or more styles of blouses in two or more colors, or a shipment that includes two or more products or categories, such as a shirt and trousers. It is necessary, however, that the expected total quantity of assembled products for each category be provided. Further, the Shipper's Declaration should indicate the quantity of each style, product, or different fabrication so that an accurate audit may be conducted if necessary.

Definition of U.S. Formed and Cut Fabric

To qualify for the Special Regime, products must be eligible for entry under TSUS item number 807.0010, a subset of TSUS item number 807. (Under the Harmonized System, such items will be entered under USTS item number 9802.00.8010.) Under TSUS 807.0010 (and USTS 9802.00.8010), all fabric components (with the exception of findings, trimmings and elastic strips of less than one inch in width, not exceeding 25 percent of the cost of the components of the assembled product) must be U.S. formed and cut. Greige goods imported into the United States and then finished in the United States do not qualify under the Special Regime because such fabric is foreign-formed.

Fabric that, under rule 33 of the Federal Trade Commission regulations (16 CFR 303.33), would have to be labeled "imported cloth, finished in the USA" or "Made in [foreign country], finished in USA" does not qualify as

U.S. formed fabric and does not qualify for treatment under the Special Regime.

Fabric that is woven or knitted in the United States from foreign yarn is considered U.S. formed for the purposes of the Special Regime. Except as described below, the U.S. formed and cut fabric requirement applies to all textile components of the assembled product, including linings and pocketings.

Findings, Trimmings and Elastic Strips of Less than 1" in Width

Findings, trimmings and elastic strips of less than one inch in width incorporated into the assembled products may be of foreign origin provided they do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, zippers, including zipper tapes, and labels. The exception for foreign origin elastic strips is limited to those elastic strips of less than one inch in width used in the manufacturer of brassieres.

To establish that foreign origin findings, trimmings and elastic strips do not exceed 25 percent of the cost of the components of the assembled product, firms may file with the port of verification (the port of export) a list of the unit cost of each of the components and then certify on the form ITA-370P that the foreign origin findings, trimmings and elastic strips do not exceed 25 percent of the cost of the components of the assembled product. It is not necessary to include all unit cost information on each form ITA-370P if that information has been filed with the port of export. On the form ITA-370P, however, it should be stated that the unit cost data is on file with the port of verification.

Border Ports and District Offices

Participation in the Special Regime is limited to the 26 ports located on the United States-Mexico border. Further, because each of the four district offices located on the border will act as the "central office" for all Special Regime shipments within its district, the port of importation must be within the same district as the port of exportation. The four Customs district offices on the border are: Laredo, Texas; El Paso, Texas; San Diego, California; and Nogales, Arizona. Thus, a Special Regime shipment exported to Mexico from a port within the El Paso district may be imported through the same port from which it exited or through any other port within the El Paso district, but

it may not be entered through a port outside the El Paso district.

The visa requirements under the terms of the agreement between the United States and Mexico will be published in the **Federal Register** by separate notice. That notice also will identify the effective date for the use of form ITA-370P.

Requests for additional information or clarification of the requirements and procedures for participation in the Special Regime should be made in writing to the Chairman of CITA, Department of Commerce, Room H3100, Washington, DC 20230.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-9821 Filed 4-29-88; 12:50 pm]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 23-24 May 1988.

Time of Meetings: 0800-1700 hours, each day.

Place: San Diego, California.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for the purpose of drafting an interim report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Office, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-9746 Filed 5-2-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Chapter 2, Education Consolidation and Improvement Act of 1981; Intent to Repay to the Oakland (California) Unified School District Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234e), the U.S. Secretary of Education (Secretary) intends to repay to the Oakland Unified School District (OUSD) under a grantback arrangement an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the OUSD's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: Comments must be received on or before June 2, 1988.

ADDRESSES: All comments concerning this notice should be addressed to Mr. Ramon Ruiz, Deputy Director, Division of Educational Support, U.S. Department of Education, 400 Maryland Avenue SW., Mail Stop 6264, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Ramon Ruiz, Telephone: (202) 732-4059.

SUPPLEMENTARY INFORMATION:

A. Background

In February 1986, the Department recovered \$2,093 in settlement of a claim arising from an audit of the Oakland Unified School District (OUSD) for the period January 1, 1980, through November 30, 1980. The claim involved the OUSD's administration of its Cities in Schools (CIS) project under Title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2943 (Supp. V 1981)). In particular, the auditors concluded that the OUSD had improperly transferred \$4,000 of grant funds under its CIS program to a CIS program in the Bronx, New York, without receiving any services in return. Costs charged to a grant program must be "necessary and reasonable for proper and efficient administration of the grant program." 45 CFR Part 74, Appendix C, Part I.C.1.a (1979) and may "not be

allocable to or included as a cost of any other federally financed program in either the current or a prior period," 45 CFR Part 74, Appendix C, Part I.C.1.f (1979). Accordingly, the Department upheld the auditors' finding and required the OUSD to refund \$4,186 for the improper transfer of funds and related indirect costs.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the school district affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the school district that resulted in the audit determination have been corrected and the school district is, in all other respects, in compliance with the requirements of the applicable program;

(2) The school district has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the school district's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the OUSD has applied for a grantback of \$1,570 and has submitted a plan for use of the grantback funds under Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3811-3876). Although the final audit determination against the OUSD resulted from the improper transfer of CIS funds under Title III, Title III has been repealed and its purposes consolidated into Chapter 2. Therefore, the grantback funds would be used under Chapter 2, although only for purposes authorized under the CIS program.

Under its plan, the OUSD proposes to use the grantback funds to help reduce the physical and cultural isolation of students in Marcus Foster Middle School and to provide educational and

cultural enrichment activities to increase those students' academic achievement. The student population is 93% black, 5% Asian, and 1% Hispanic. Ninety-seven percent of the students are from families receiving Aid to Families with Dependent Children. Specifically, the OUSD plans to conduct field trips to the State Capitol, the Oakland Museum, and the Exploratorium. The grantback funds would be used to assist with transportation to and from activities and admission fees.

D. The Secretary's Determination

The Secretary has carefully reviewed that OUSD's grantback request, the OUSD's plan, and other information submitted by the OUSD. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the OUSD under a grantback arrangement. The grantback award would be in the amount of \$1,570, which is 75 percent of the funds recovered by the Department as a result of the final audit determination.

F. Terms and Conditions Under Which Payment Under a Grantback Arrangement Would Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program, including the submission of periodic reports on the use of the repaid funds and evidence that the school district has consulted with students or representatives of the population that would benefit from the grantback award.

The OUSD agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The OUSD will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the OUSD submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) Pursuant to section 456(c) of GEPA, the OUSD will obligate all funds received under this grantback not later than September 30, 1989.

(3) The OUSD will, not later than January 1, 1990, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) The OUSD will maintain separate accounting records documenting the expenditure of the grantback funds.

(Catalog of Federal Domestic Assistance (CFDA) Number 84.151; Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: April 28, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-9786 Filed 5-2-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Grant); Restriction of Eligibility (Grant); University of Arkansas

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a grant to the University of Arkansas in the amount of \$400,000.

DOE has determined that the eligibility for this grant award shall be limited to the University of Arkansas based upon the following information.

This research program is for the purpose of advancing the technologies

of the solvent extraction of southern U.S. tar sands. The project will develop data to allow the evaluation of the solvent, bitumen extraction process, and to determine the feasibility of a pilot plant for the process. The University of Arkansas has put together a project team consisting of their own researchers, those of Minerals Resources Institute (MRI) and those of Diversified Petroleum Recovery, Inc. (DPR). With these resources, the University of Arkansas is able to focus many years of related expertise, considerable equipment, and required patents into a very cohesive team which can provide the full spectrum of skills needed to conduct a comprehensive tar sand research project. The DOE is interested in sponsoring this research and has determined that it is appropriate to make this award to the University of Arkansas on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: G. Richard Marron, U.S. Department of Energy, Morgantown Energy Technology Center, Laramie Project Office, P.O. Box 1189, Laramie, WY 82070. Telephone: (307) 721-2437. Procurement Request No. 21-88MC25043.000.

Date: April 2, 1988.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88-9772 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award (Grant); Restriction of Eligibility (Grant); University of Utah

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a grant to the University of Utah in the amount of \$400,000.

DOE has determined that the eligibility for this grant award shall be limited to the University of Utah based upon the following information.

This research program is for the purpose of advancing the technologies of the water-assisted and modified water-assisted, fluidized bed, fluidized-bed heat pipe coupled and rotary kiln processes for extracting bitumen from

western tar sands in order that valid evaluations of their commercial potentials are possible. The research is a continuation of research which has been conducted for many years at the University by the same research team. This team has several patents on related recovery processes, upgrading techniques, and catalyst uses. Additionally, the University already has a place several millions of dollars worth of operating equipment which is directly useful for this research. The DOE is interested in sponsoring this research and has determined that it is appropriate to make this award to the University of Utah on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: G. Richard Marron, U.S. Department of Energy, Morgantown Energy Technology Center, Laramie Project Office, P.O. Box 1189, Laramie, WY 82070. Telephone: (307) 721-2437. Procurement Request No. 21-88MC25046.000.

Date: April 22, 1988.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88-9773 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Committee on Establishing a Petroleum Research Institute; National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Establishing a Petroleum Research Institute of National Petroleum Council.

Date and Time: Monday, May 23, 1988, 2:00 PM.

Place: Hyatt Regency Hotel-East Tower, Universe Room, Dallas-Forth Worth International Airport, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585. Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review and discuss final aggregations of R&D survey, the results, and report to NPC.

Tentative Agenda

- Review and discuss final aggregations of the Committee's survey of R&D activities.
- Review and discuss aggregated results of the Activity Survey Addendum.
- Discuss the Committee's report to the National Petroleum Council.
- Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Committee on Establishing a Petroleum Research Institute is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 88-9774 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-07-NG]

Amoco Energy Trading Corp.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration; DOE.

ACTION: Notice of order extending 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 extending Amoco Energy Trading Corporation's (Amoco Energy) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-07-NG authorizes Amoco Energy to increase the gas volumes presently authorized under DOE/ERA Opinion and Order No.

106 from 70 Bcf to 300 Bcf through September 23, 1990.

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, April 27, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-9775 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-23-NG]

Mobil Gas Co., Inc.; Application To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 15, 1988, of an application filed by Mobil Gas Company Inc. (MOGASCO) requesting blanket authorization to export natural gas to Canada on a short-term and spot basis not to exceed 100 Bcf in the aggregate over a two-year period beginning on the date of first delivery.

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, requests for additional procedures and written comments are to be filed no later than June 2, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586-1657.
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:

MOGASCO, a Delaware corporation

with its principal office in Houston, Texas, is a wholly owned subsidiary of Mobil Natural Gas Inc., which is a wholly owned subsidiary of Mobil Fairfax Inc. The applicant proposes to act as a broker or as an agent, acting on its own behalf or on behalf of others. The gas would be supplied from a variety of domestic sources and sold to a range of Canadian purchasers, including, but not limited to, industrial and commercial end users, pipelines and distribution companies.

The terms of each arrangement would be negotiated in response to market conditions. MOGASCO intends to use existing transmission systems and will not require the construction of new or separate facilities in order to export the natural gas. MOGASCO also intends to comply with ERA's reporting requirements.

This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate by the Administrator, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that current excess gas supplies evidence a lack of need for this gas to serve regional and national markets. The applicant further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. Parties opposing the arrangement should comment in any response on these matters.

MOGASCO requests that an authorization be granted on an expedited basis. An ERA decision on MOGASCO's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

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., June 2, 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 MOGASCO's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 26, 1988.
Constance L. Buckley,
Director, Natural Gas Division, Office of
Fuels Programs, Economic Regulatory
Administration.
[FR Doc. 88-9776 Filed 5-2-88; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration; Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before June 2, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA-254, 851, and 858
3. 1905-0160
4. Nuclear and Uranium Data Program Package
5. Extension
6. Monthly, Quarterly, Semi-annually, and Annually
7. Mandatory
8. Individuals or households, State or local governments, Businesses or other for profit, and Small businesses or organizations
9. 183 respondents
10. 526 responses
11. 6,482 hours
12. Forms EIA-254, 851, and 858 collect information on the costs of nuclear powerplants under construction, domestic uranium production data, and certain aspects of uranium marketing, exploration, and financial data. Data are used in determining the viability of the domestic uranium industry. Respondents are firms in the uranium business and electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 790a).

Issued in Washington, DC, April 28, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-9777 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Application Filed With the Commission

April 7, 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:* Preliminary Permit.

b. *Project No.:* 10537-000.

c. *Date Filed:* February 2, 1988.

d. *Applicant:* Crooked Creek Hydro Associates.

e. *Name of Project:* Crooked Creek Hydro Project.

f. *Location:* On Crooked Creek in Armstrong County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* David M. Coombe, Synergics, Inc., 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 268-8820.

i. *FERC Contact:* Charles T. Raabe, (202) 376-9487.

j. *Comment Date:* June 10, 1988.

k. *Description of Project:* The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (a) A 10-foot-diameter and 1,320-foot-long penstock within the Corps' existing tunnel; (b) a proposed powerhouse containing two generating units rated at 1,250 kW each; (c) a proposed 300-foot-long, 13.2-kV transmission line; and (d) appurtenant facilities. Applicant estimated average annual energy output is 10 GWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$100,000.

l. *Purpose of Project:* Energy produced at the project would be sold to the Pennsylvania Electric Company.

m. *The notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent

to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30 (b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "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 the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9760 Filed 5-2-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3373-5]

Agency Paperwork Reduction Act Requests Completed by OMB

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces Office of Management and Budget (OMB) actions on the Information Collection Requests (ICRs) submitted by EPA.

Approved

EPA ICR #1191; National Survey of Pesticides in Drinking Water Wells; OMB action date: 3/24/88; OMB #2040-0107; expires 4/30/90. Approval of full national survey.

EPA ICR #0002; Pretreatment Program Information Requirements; OMB action date: 3/25/88; OMB #2040-0009; expires 4/30/90. Reinstatement of an existing collection.

Discontinued

EPA ICR #0220; Information Requirements for 404 State Permit Applications; OMB action date: 3/29/88; OMB #2090-0015.

Extensions of Expiration Date

EPA ICR #1296; Radon Information Effectiveness Survey; OMB action date: 3/28/88; expiration date extended to: 11/30/88.

EPA ICR #0168; NPDES Requirements for Approved State Programs; OMB

action date: 3/28/88; expiration date extended to: 7/31/88.

EPA ICR #0814; Storage and Treatment Permitting Standards Amendments Based on Hazardous and Solid Waste; OMB action date: 3/28/88; expiration date extended to: 6/30/88.

FOR FURTHER INFORMATION CONTACT:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460, Telephone No. (202) 382-2740

or

Susan Dudley, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, Telephone No. (202) 395-3084.

Date: April 13, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-9756 Filed 5-2-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3373-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: PCB Use in Electric Equipment and Transformers. EPA ICR #1000).

Abstract: This collection request combines several reporting and recordkeeping requirements related to PCB transformers that were formerly contained in separate ICRs. EPA continues to require PCB transformer owners to keep records on unit use, inspection and corrective action for leaks, as well as to notify the Agency regarding the installation of new units. However, the combined effects to

transformer phase-out and attrition and completion of one-time registration and labeling requirements have significantly lowered the reporting and recordkeeping burdens of this collection. This is a revision of a Final Rule.

Respondents: Owners of PCB transformers.

Estimated Burden: 5,413 hours.

Frequency of Collection: On occasion.

Office of Solid Waste and Emergency Response

Title: Information Collection Request for the Accidental Release Information Program. (EPA ICR #1331).

Abstract: The ICR requests a six month extension for the Accidental Release Information Program. Facilities receive a questionnaire if they have a release of a CERCLA chemical above the RQ that meets one of four criteria. EPA uses the data to develop prevention policy and to determine whether regulation is necessary. Five hundred total questionnaires are planned. Expedited review has been requested.

Respondents: Manufacturing facilities primarily in SIC Codes 262, 281, 286, and 291.

Estimated Burden: 6,125 hours.

Frequency of Collection: On occasion.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Timothy Hunt (ICR #1000), Marcus Peacock (ICR #1331), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: April 12, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-9757 Filed 5-2-88; 8:45 am]

BILLING CODE 6560-50-M

Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010982-008.

Title: Bahamas Shipowners and Operators Association.

Parties:

Tropical Shipping & Construction Co., Ltd.

Universal Alco Ltd.

Pioneer Shipping, Ltd.

Seaxpress, Inc.

Synopsis: The proposed amendment would permit the parties to agree on charges for transshipment of cargoes, including those transshipments taking place within the agreement trade as part of a foreign-to-foreign movement.

Agreement No.: 203-011191.

Title: Agreement Relating to the Pacific Australia Direct Line Sale Agreement.

Parties:

Rederiaktiebolaget Transatlantic ("Trans")

PAD Shipping Australia Proprietary Limited ("PADA")

PAD Line Overseas, S.A. ("PADLO")

Synopsis: Trans and PADA together owned the Pacific Australia Direct Line ("PAD"). The assets of PAD have been sold to PADLO. The proposed agreement would authorize Trans and PADA to agree not to compete with PADLO's PAD service for a period of two years following the sale.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 28, 1988.

[FR Doc. 88-9795 Filed 5-2-88; 8:45 am]

BILLING CODE 6730-01-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

FEDERAL RESERVE SYSTEM

Central Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 25, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Central Bank Shares, Inc.*, Orlando, Florida; to acquire 100 percent of the voting shares of Bank of Central Florida/Seminole County, Sanford, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eastern Wisconsin Bancshares, Inc.*, Howards Grove, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Howards Grove, Howards Grove, Wisconsin.

2. *Salin Bancshares of North Central Indiana*, Camden, Indiana; to acquire 100 percent of the voting shares of Carroll Financial Corporation, Burlington, Indiana, and thereby indirectly acquire First Bank of Carroll County, Burlington, Indiana. Comments on this application must be received by May 23, 1988.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9694 Filed 5-2-88; 8:45 am]

BILLING CODE 6210-01-M

Grenada Sunburst System Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than May 12, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Grenada Sunburst System Corporation*, Grenada, Mississippi; to acquire 100 percent of the voting shares of Sunburst Bank, Baton Rouge, Louisiana, a *de novo* bank.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9806 Filed 5-2-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Ralph J. Huiras

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 19, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Ralph J. Huiras*, Cedarburg, Wisconsin; to acquire 5.57 percent of the voting shares of Colonial Bancorporation, Inc., Thiensville, Wisconsin, and thereby indirectly acquire Colonial Bank Richfield, Richfield Township, Wisconsin; Colonial Bank Port Washington, Port Washington, Wisconsin; and Colonial Bank Thiensville, Thiensville, Wisconsin.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Michael C. Stinson*, Fort Worth, Texas; to acquire 89.49 percent of the voting shares of Statewide Bancshares Corporation, Cedar Hill, Texas, and thereby indirectly acquire First Bank & Trust Company, Cedar Hill, Texas.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9695 Filed 5-2-88; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1988.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Investment Banking Company, Richmond, Virginia, in "mezzanine" financing for management buyouts, "going private" transactions, options or warrants to acquire preferred stock or common equity, other securities convertible or exchangeable for preferred stock or common equity recapitalizations, and other merger and acquisition transactions. This financing will primarily take the form of subordinated loans, although in connection therewith, preferred stock, common equity or a combination may be acquired as the law and banking regulations allow pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9696 Filed 5-2-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for National Acquired Immunodeficiency Syndrome; Minority Information and Education Program; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC), announces the availability of Fiscal Year 1988 funds for grants for national and regional ethnic minority organizations or national and regional ethnic minority consortia related to providing Acquired Immunodeficiency Syndrome (AIDS) information and

education programs for ethnic minority populations.

Authorizing Legislation

This program is authorized under the Public Health Service Act: Section 301 (a) (42 U.S.C. 241(a)), and section 318, as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Background

Ethnic minority communities throughout the U.S. have been disproportionately affected by the AIDS epidemic. Of the 58,000 cases of AIDS thus far reported in the U.S., 40% occur among two particular minority groups—Blacks and Hispanics. Blacks currently represent 26% of total U.S. AIDS cases, while representing 12% of the total U.S. population; Hispanic groups contain 14% of all AIDS cases, yet constitute 6% of the population.

Program Purpose

The purpose of the proposed program is: (1) To broaden the base of minority community organizations involved in AIDS prevention efforts at the local and regional level by funding HIV prevention activities of national minority organizations and national or regional minority consortia; (2) to support activities on a national or regional basis which will complement and supplement state and local efforts to inform and educate minorities at risk of HIV infection; (3) to encourage alternative regional and national approaches to health education and risk-reduction which are sensitive and appropriate to the cultural needs of minority populations; (4) to educate and involve greater numbers of minority community leaders, representatives, institutions, and agencies in minority AIDS information/education activities, and to assure coordination of these activities with education and prevention efforts of State and local health departments; and (5) to identify existing national and regional AIDS information/education needs, and address these needs through community resources not currently involved in AIDS prevention.

Eligibility Requirements

Applications may be submitted by a single organization or a group of two or more organizations. If two or more organizations combine to submit an application, one must be designated as the primary recipient of the award.

That organization shall have primary responsibility for submission of the application, and any subsequent award, with appropriate subcontract arrangements with participating organizations. The Project Director must

be an employee of the applicant organization. The application must describe in full detail all such planned arrangements.

An eligible applicant organization will be of one the following two types: 1. An established national minority non-profit organization which may be health, education, social service, professional, or voluntary, and which has the capacity and organizational experience to implement and manage programs of national or regional scope and which demonstrates the capacity to operate and centrally administer a coordinated AIDS information/education/risk reduction program or networking on a national basis; or

2. A national or regional minority non-profit organization or consortia or group of organizations which bring together a range of capabilities of either national, regional, or local scope, and which demonstrate a capacity to operate and centrally administer a regionally or nationally coordinated minority AIDS information/education program.

Availability of Funds

Approximately \$5,000,000 will be available in Fiscal Year 1988 to fund approximately 30 grants under this announcement. It is expected that the range of grant awards will be between \$100,000 and \$300,000.

It is expected that the initial grant awards will be made on or about August 1, 1988, and will be initially funded for a 9-month budget period, with a project period of up to 5 years.

Organizations and consortia may submit more than one application under this program, but no specific organization or consortium member will receive more than one grant each through this program.

use of funds

Grant Funds may be expended for reasonable program purposes, such as personnel, their training, travel, equipment, supplies and services, including contractual services (i.e., contracts with community organizations) directly related to planning, organizing, and conducting the national/regional AIDS minority Information/Education Program described in the announcement.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk reduction education efforts, if approved in accordance with the CDC guidance document titled Content aids-Related Written Materials Pictorials, Audiovisuals, Questionnaires, Survey

Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988), as published in the *Federal Register* (53 FR 6034, February 29, 1988).

Grant Program Activities

Consideration will be given to national and regional projects directed toward one or more U.S. ethnic minority populations. Proposed projects should include one or more of the following activities:

A. Developing programs which provide training and technical assistance to community organizations in the mobilization of local resources, networking at the community level, development and planning of programs, and utilization of existing and/or alternative channels for reaching and educating minorities at risk.

B. Developing programs which involve and train minority community professionals, outreach workers, and persons with HIV infections in the provision of AIDS-related information and education, or which integrate AIDS health education/risk-reduction within existing frameworks for minority community health professionals and outreach workers.

C. Promoting the creation and broadening of national, regional, and local minority networks, and enhancing the functioning of existing minority networks, in order to increase the dissemination of effective AIDS-related information and education within targeted minority populations, and to ensure adequate information-sharing and program coordination among AIDS-related minority educational providers and organizations.

D. Assisting in the creation and implementation of innovative and coordinated strategies for the dissemination of AIDS information and education, and for assuring that these strategies are coordinated with efforts of State and local health departments and community-based organizations, such as through AIDS-specific coalitions, youth outreach programs, or programs designed to reach IV drug abuser populations.

E. Designing and performing a needs assessment and planning project on a national or regional basis which: (1) profiles demographic characteristics of a selected minority population in terms of AIDS risk factor and levels of knowledge, attitudes, and behavior regarding AIDS transmission; (2) describes current service provision levels in terms of ongoing education, training, and risk-reduction information dissemination; (3) describes barriers to the dissemination of effective AIDS

education to target groups; and (4) proposes strategies for the innovative utilization of community resources for the increased provision of AIDS education within the population.

F. Developing programs to provide ongoing AIDS-related information on local or regional bases, such as through development of technical materials, the provision of technical assistance and program development services, the utilization of available technologies, such as computer technology, to enhance services, or the establishment of information-sharing consortiums or forums.

G. Developing programs which increase the number of effectiveness of community-level volunteers for the dissemination of AIDS information and education through innovative community volunteer and public programs.

Review and Evaluation Criteria

1. Knowledge of Target Population: (15%)
2. Proposed Program: (30%)
3. Applicant Capability and Coordination Efforts: (35%)
4. Evaluation Design: (10%)
5. Program Personnel: (10%)
6. Program Budget: Not Scored

Continued Funding

An application for continued funding of these activities within an approved project period should contain the following information.

1. Description of activities performed and results achieved during the prior budget period.
2. Short-term objectives for the new budget period.
3. A description of the method of operation that will be used to accomplish any new objectives or improve program operations.
4. An evaluation plan which will help determine if new methods are effective and the objectives are being achieved.
5. A budget and accompanying justification consistent with the purpose and objectives of the project.

Special Guidelines for Application Preparation

There is a scheduled series of pre-application meetings. Pre-registration is not required but is requested, therefore potential applicants should provide to Pace Enterprises, Inc., 5203 Leesburg Pike, Suite 710, Falls Church, VA 22041, (703) 845-5700 or 100 Colony Square, Suite 200, Atlanta, GA 30361, (404) 875-6157, verbally or in writing the full names, titles, agency, street address, city, state, zip code, and the telephone numbers of the persons who are

planning to attend one of these meetings. Each potential applicant may send no more than 2 representatives to no more than one of the meetings. The purpose of these meetings will be to help potential applicants to:

1. Understand the scope and intent of the CDC National AIDS Minority Information/Education Grants Program;
2. Understand the requirements and guidelines established for applicants under this Request for Applications;
3. Understand the structure and method of the application format, including gaining a working familiarity with the intent of the application sections; and
4. Gain awareness of some of the other national and regional organizations applying for funds under the program, and potentially coordinate some program planning efforts or activities with other organizations in attendance at meetings.

While the information conveyed in the meetings is intended to assist all potential applicants in preparing their applications, attendance at any meeting is NOT mandatory for the submission of an application, NOR will such attendance or non-attendance be used in any way in the evaluation of applicants and in the selection of potential awardees.

Please see "Availability of Complete Program Description and Application Assistance" Section for further information regarding technical assistance in application preparation.

Application and Submission Deadline

The original and two (2) copies of the application (PHS 5161-1, revised 3/86) must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, GA 30305, on or before June 15, 1988.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date.

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1 A. or B. are considered late applications. Late applications will not be considered in

the current competition, and will be returned to the applicant.

Other Requirements

Applications are not subject to review as governed by Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Availability of Complete Program Description and Application Assistance

A full description of the program, including criteria for review of applications, application format, application procedures, copies of application forms PHS 5161-1, and other materials may be obtained from Nealean Austin, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 642-6575. Technical Information may be obtained from Wayne Duncan, National AIDS Information and Education Program, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639-2384.

Dated: April 27, 1988.

Robert L. Foster,

Acting Director, Office of Program Support,
Centers for Disease Control.

[FR Doc. 88-9703 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88N-0100]

Cooperative Agreement To Establish a National Center for Food Safety; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), proposes to enter into a cooperative agreement to establish a national center for food safety. FDA is inviting applications from the Illinois Institute of Technology (IIT) and, through IIT, with the IIT Research Institute (IITRI) as well as other interested parties. The center proposed by IIT will be located near Chicago, IL, on property owned by IIT, which includes office and laboratory space as well as an industrial-size pilot plant. This would be the first American effort to join the resources of government, academia, and a research organization in a consortium to study questions of food safety.

DATES: Applications must be received by 5 p.m. e.s.t. June 2, 1988; the earliest beginning date for award is July 5, 1988.

ADDRESSES: Applications should be submitted to and applications are available from: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170. Applications hand carried or commercially delivered should be addressed to the Park Bldg., Rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: For further information regarding the administrative and financial management aspects of this notice contact: Robert L. Robins (address above).

For further information regarding the programmatic aspects of this notice contact: Karen Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA's authority to enter into cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95-224. FDA's research program is described in the Catalog of Federal Domestic Assistance No. 13.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will have to the public. As discussed below the agency believes that a cooperative agreement to establish a national center for food safety will benefit the public by providing an opportunity for improving existing scientific knowledge in the food safety area.

II. Background

In the United States there is no single center for research and development of expertise and analytical methodology in food safety. A recent comprehensive review by FDA of its food science research program concluded that a more diversified program is necessary to provide the indepth knowledge needed to review effectively the products of new technology and protect the public health (Food Science Research Program Report, CFSAN, Office of Physical Sciences, December 1987). FDA believes that current agency support in the area of food science should:

Encourage development of expertise to understand emerging technologies in

general and biotechnology in particular and to evaluate the effects of new technologies on food components and on the adequacy of processing variables;

Encourage scientific interchange between industry, academia, and government concerning the impact of recent technological developments on the composition of foods, particularly on constituents of public health significance; and

Encourage the development of expertise throughout the food safety science community.

Expertise in evaluating food processing must be developed consistent with industry advances in modernizing food processing methods. There is a clear need for collaborative work and research on processing systems to determine critical control points that require monitoring to enhance quality assurance efforts and promote efficient and effective regulation.

III. National Center for Food Safety

A. Concept

The agency believes that a collaborative effort between FDA and the private sector (i.e., academia and a nonprofit research organization) could be designed to:

Develop scientific expertise necessary to address ongoing key public health issues and to provide early warning of emerging problems, and also to provide support during periodic emergencies and crisis situations (e.g., *Listeria*, PCB's, aldicarb, vomitoxin); and

Establish mechanisms for exchange of technical information and scientific concepts between FDA and other sectors of the food science community (e.g., industry and academia).

This collaboration would result in a national center for food safety. The center would concentrate on developing the scientific expertise necessary to deal with current and emerging public health issues and on establishing mechanisms for the exchange of information with industry and the public.

The center could improve existing expertise concerning the physical and chemical analysis of foods and food products. The center could increase understanding about deviations in the "normal" composition of foods, such as the presence of contaminants, filth, or process-induced chemical changes. Moreover, existing scientific expertise in food engineering could also be increased concerning how fluid mechanics, transfer and rate processes, and process control instrumentation may affect food processing, packaging, and storage. Similarly, existing expertise could be

improved concerning the relationship between processing, packaging, and storage factors and the chemical composition and microbial characteristics of foods.

Such a center would focus on recent developments in the science of food formulation, processing, and packaging, including the study of macrocomponents of foods (carbohydrates, proteins, and lipids); new food processes (e.g., dehydration, fermentation, thermal) and packaging systems, with a particular emphasis on plastics. The science of microcomponents of foods—those naturally occurring, added, or altered during formulation, processing or storage—that are of public health significance would also be an important aspect of such study.

Such a collaborative center should be designed to provide the environment and expertise necessary to conduct advanced research in key areas, including extrusion processing, aseptic processing, packaging integrity, irradiation processing, and biotechnology.

In summary, expertise in food science is basic to progress and the continued safety of the U.S. food supply. Keeping pace with expanding knowledge is essential to the timely development and evaluation of processing techniques, product-specific processes, new packaging materials and new uses for these materials, and use of biotechnology.

B. Research Facilities

To pursue the type of collaborative research discussed, certain specialized facilities are needed. A pilot plant, built to modern specifications and equipped with the many physical requirements necessary to conduct routine food processing research in a commercial atmosphere would be essential. The physical layout of the plant would have to provide maximum versatility in the use and arrangement of equipment of both commercial and pilot size, and in the capability to simultaneously operate several different pieces of equipment without interference with each other. In addition to facilities to conduct routine processing research, there would have to be facilities suitable for more complex research. Also, a clean room, equipped with laminar air flow and HEPA filters and easily sterilized, would be needed for work involving opportunistic pathogens.

The availability of containment facilities, in which experimental work could be housed in its entirety, would also be required to provide the opportunity to conduct essential research that is potentially hazardous.

For example, research to determine the adequacy of processing parameters used in commercial food production requires the use of pathogenic bacteria as well as large quantities of the food being processed. If this type of research is not conducted in a controlled manner in a containment facility, a risk exists that the pathogen could contaminate the environment. Similarly, containment facilities would be essential for research in some critical areas of biotechnology. Such facilities would be used for example to understand the production of flavors and food additives in scaled up fermentation processes which rely on genes cloned into microorganisms.

Another critical attribute of a research facility would be the ability to conduct proprietary research. Through this proprietary research collaborators will have access to state-of-the-art food processing and packaging equipment. Examples of the types of sophisticated equipment are: Aseptic processing and packaging equipment for both homogeneous foods and foods containing particulate matter; extrusion equipment for fiber fraction and processing parameter studies; and reverse osmosis and ultrafiltration equipment for concentration studies. In addition, the traditional types of processing equipment, for example, plate heat exchangers and retorts, would be needed.

Through the collaboration offered by a national center, each contributor would have access to the equipment described above, and would have the opportunity to gain valuable insight and practical knowledge about modern developments within the food industry. It is envisioned that these goals would be accomplished in a nonprofit, research-oriented atmosphere conducive to the transfer of science and technology. It is also envisioned that agreements under the Federal Technology Transfer Act of 1986 (FTTA) may ensue from this collaboration.

C. Summary

The public and FDA would both benefit from the type of collaboration possible through a national center for food safety. Scientists from each sector would bring a special perspective to advancing the knowledge of food safety science. Interaction among such scientists would stimulate creativity and innovation. FDA's presence in such a venture will promote a greater awareness and understanding of regulatory procedures among academic and industry scientists, thereby providing economic and program benefits to all sectors.

In summary, collaboration between the public and the private sector would be an efficient means of remaining current with scientific and technical accomplishments from a food safety perspective. FDA believes that a national center for food safety would be a sound investment in the future public health of American consumers. It would provide an opportunity for extensive cooperation with university scientists; and it would stimulate the idea of technology transfer, which might ultimately contribute significantly to implementation of the goals of the FTFA.

IV. Proposal

FDA is considering entering into a cooperative agreement with IIT and, through IIT, with its nonprofit research affiliate, IITRI. The agency believes that this institution has the research capability, the required research facilities, and the academic interest to develop a comprehensive program in food safety. For these reasons, FDA proposes to enter into this cooperative agreement with less than maximum competition. However, the agency invites applications from other interested parties who can provide all the elements described in item III. above. The amount of funding to be provided by FDA is \$700,000 with possible additional increments.

FDA has discussed this program with IIT and will be available to discuss the program concepts with any other qualified applicants. However, because it is important to keep this project research oriented and beyond any appearance of conflict of interest, FDA will not consider applications from any FDA-regulated industry.

In conjunction with, but not part of, this cooperative agreement, FDA may also occupy laboratory and office space at the facility of the recipient. This space may eventually accommodate approximately 40 scientific and administrative personnel. In addition, FDA anticipates entering into separate contractual agreements to perform adjunct segments of work important to the development of a well-rounded national food safety program concept.

V. Reporting Requirements

Program progress reports and financial status reports will be required quarterly, based on date of award. These reports will be due within 30 days after the last day of each quarter. A final program progress report and financial status report will be due 90 days after expiration of the budget period of the cooperative agreement.

VI. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a cooperative agreement. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR Part 52, 45 CFR Part 74, and the PHS grants policy statement.

B. Eligibility

The cooperative agreement is available to any public or private nonprofit organization, State and local units of government, and for profit organizations (excluding fees or profit). Any FDA-regulated industry will not be eligible for consideration.

C. Length of Support

The length of support is anticipated to be 1 year, with the possibility of an additional 2 years. Noncompetitive continuation of support, beyond the first year, will be based upon review of performance during the preceding year and the availability of Federal fiscal year appropriations.

VII. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded under any request for applications (RFA). Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint a project officer or coinvestigator who will actively monitor the FDA-supported program under this award.

2. FDA will retain the right to have prior approval on the appointment of the program director (principal investigator) and all key scientific personnel proposed by the applicant.

3. FDA will be directly involved in the guidance and development of the program and of the collaborative structure for the program.

4. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, coauthorship of publications.

5. FDA will initially have approximately eight professional/scientific and two administrative/clerical personnel working in collaboration with the grantee.

VIII. Review Procedure and Criteria

A. Review Procedure

Applications must be responsive to the RFA. Those applications judged not to be responsive will not be considered by FDA for funding under this RFA and will be returned to the applicant.

Applications will undergo dual peer review. An external review committee of experts in food science research will review and evaluate each application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Science Council.

B. Review Criteria

1. *Responsiveness to RFA.* The application shall demonstrate that the objectives of the RFA are understood and the applicant shall offer a logical program to meet the objectives of the RFA.

2. *Adequacy of plan.* The applicant shall provide FDA with a detailed plan to establish, collaboratively, a center for food safety as a multidisciplinary public/private effort (i.e., FDA, academia, and industry). The application will be evaluated by FDA on the thoroughness of the plan, the reasonableness of the approach, and adherence to the concept and its objectives, as stated in the RFA. The detailed plan shall form the basis of a balanced food science program directed toward development of skills and expertise in aspects of food quality and food safety, as stated in the RFA. Included will be development of: Expertise in the physical and chemical analysis of food and food products; understanding of the composition of foods, including deviations from the norm; expertise in food engineering; understanding of the biotechnological principles involved in the production of new food additives using genetically-engineered microorganisms and in new methods of producing traditional ingredients; and understanding of the effect of food formulation and processing techniques on the composition of foods. The plan shall also include a schedule for future research in the areas of extrusion processing, aseptic processing, packaging integrity, irradiation processing, and biotechnology as it impacts on food safety research.

3. *Timeliness of program implementation.* FDA will evaluate the application for the applicant's ability to establish the center in an expeditious manner.

4. *Adequacy and availability of research facilities.* The application shall demonstrate that the applicant has adequate research facilities, including

pilot plant facilities for food processing and chemical engineering studies and containment facilities for biotechnology work, as stated in the RFA.

5. *Ability to conduct proprietary research.* The application shall demonstrate the applicant's ability to conduct proprietary research and to protect confidentiality of data, procedures, etc.

6. *Staff experience and capabilities.* The application must demonstrate the availability of core staff with the experience and capability to conduct research as described in the detailed plan presented in item 2. The staff must have the capability to deal with contemporary food safety issues as well as plan long-range research to assess future needs. The availability of sufficient administrative and support personnel to meet the RFA objectives must also be demonstrated.

7. *Reasonableness of proposed budget.* Those applications considered to be technically responsive shall then be further evaluated on the basis of reasonableness of costs.

IX. Method of Application

A. Format for Application

Application must be submitted on Form PHS-398, Application for Public Health Service Grant. The face page of the application must reflect the RFA number, RFA-FDA-CFSAN 88-1. To ensure confidentiality of individual salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits. No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of applicable statutes including the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the FDA regulations implementing that Act (21 CFR 20.61).

The collection of information requested on Form PHS-398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925-0001.

B. Legend

Unless disclosure is required by the Freedom of Information Act, as amended (5 U.S.C. 552), as determined by the freedom of information officials

of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

C. Application Submission

The original and six copies of the completed application should be sent or delivered to Robert Robins (address above).

Prospective applicants should label the outside of the mailing package and the top of the application face page with "Response to FRA-FDA-CFSAN 88-1."

Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or by a legible dated receipt from a commercial carrier. Private metered postmarks will not be acceptable proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Note.—Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on the method, applicants should check with their local post office.

This program is not subject to the requirements of Executive Order 12373.

Applications must be received by 5 p.m. e.s.t. on June 2, 1988. Applications received not meeting these criteria will be returned to the applicant.

Dated: April 26, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-9699 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0092]

C.R. Bard, Inc.; Premarket Approval of Dupen™ Long Term Epidural Catheter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by C.R. Bard, Inc., Murray Hill, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Dupen™ Long Term Epidural Catheter (formerly Davol Externalized Epidural Catheter). After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 2, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review 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 A. Wargo, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION: On December 12, 1986, C.R. Bard, Inc., 731 Central Ave., Murray Hill, NJ 07974, submitted to CDRH an application for premarket approval of the Dupen™ Long Term Epidural Catheter. At FDA's request, the applicant submitted more data, and FDA filed the application on June 17, 1987. The device is indicated for Long-term access to the epidural space for the delivery of preservation-free morphine sulfate to relieve intractable pain in cancer patients. The device is to be used only with morphine sulfate which has been approved for epidural administration.

On October 5, 1987, the General Hospital and Personal Use Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Andrea A. Wargo (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory

committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 2, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 25, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-9766 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0094]

Serono Laboratories, Inc.; Premarket Approval of Fibrel® (Gelatin Matrix Implant)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Serono Laboratories, Inc., Randolph, MA, for premarket approval, under the Medical Device Amendments of 1976, of Fibrel® (gelatin matrix implant). After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological

Health (CDRH) notified the applicant by letter of February 26, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 2, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On April 15, 1986, Serono Laboratories, Inc., Randolph, MA 02368, submitted to CDRH an application for premarket approval for Fibrel* (gelatin matrix implant). The device is composed of absorbable gelatin powder (denatured collagen types I and III) and epsilon aminocaproic acid in a lyophilized form. The device is indicated for use in the correction of depressed cutaneous scars which are distensible by manual stretching of the scar borders. The device is reconstituted with equal amounts of the patient's plasma and 0.9 percent Sodium Chloride for Injection, USP.

On May 29, 1987, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 26, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nirmal K. Mishra (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request

either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 2, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 25, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-9767 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (*Federal Register*, Vol. 52, No. 105, pg 20643, dated Tuesday, June 2, 1987) is amended to indicate a revised title and functional

statement for the Division of Public Information.

The specific amendment to Part F. is described below:

- Section FG.20.A.3., Division of Public Information (FGC3) is deleted in its entirety and replaced by the following new Section FG.20.A.3.

3. Division of Project Development (FGC3)

Designs and conducts public information campaigns and strategies to promote HCFA priorities. Obtains Department of Health and Human Services' (HHS) clearances for HCFA publications intended for public distribution. Ensures that expenditures for public affairs materials are in accord with HHS ceilings and guidelines. Working through an Agency publications advisory group, prepares an annual publications agenda for HCFA. Writes and edits informational material such as *Your Medicare Handbook*. Arranges for the use of HCFA exhibits at meetings and conventions of major organizations. Manages the second surgical opinion program.

Date: April 15, 1988.

Robert A. Streimer,

Acting Associate Administrator for Management and Support Services.

[FR Doc. 88-9726 Filed 5-2-88; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for an existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is proposing to revise the system notice for the Medicare Bill File (Statistics), System No. 09-70-0005.

EFFECTIVE DATES: The proposed new routine use shall take effect without further notice June 2, 1988, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mrs. Rose Ellen Connerton, Office of

Statistics and Data Management, Bureau of Data Management and Strategy, HCFA, 1-F-2 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-8069.

SUPPLEMENTARY INFORMATION: The Medicare Bill File (Statistics), System No. 09-70-0005, contains records on bills for services furnished to persons enrolled in Part A (hospital insurance) and/or Part B (supplementary medical insurance) of the Medicare program. The systems notice for this system was most recently published at 49 FR 49943 (1984). Data in this system are used primarily for statistical and research purposes related to evaluating the operation and effectiveness of the Medicare program. A principal subfile in the system is the Medicare Provider Analysis and Review (MEDPAR) file. The MEDPAR file contains data from hospital bills of Medicare beneficiaries discharged from Medicare certified hospitals, including data on beneficiary demographics, medical diagnosis and surgery, and utilization of hospital resources. We are proposing to establish a new routine use to permit HCFA to disclose on an annual basis much of the information in the MEDPAR file for research into the quality and effectiveness of health care furnished to Medicare beneficiaries.

The Medicare program has an important stake in the development of improved methodologies for measuring and comparing health care quality and effectiveness. The introduction of prospectively determined hospital payments, plus the increased numbers of alternative delivery systems such as health maintenance organizations and preferred provider organizations, have raised the interest of many in the monitoring and assurance of the quality of health care provided under these revised financial incentives. Progress in the assessment of quality and effectiveness, however, has been impeded in part by the lack of data bases describing the care given to patients.

HCFA convened a symposium in June 1987 to identify research needs relating to the measurement and monitoring of quality and effectiveness of care. Strong support was expressed at the symposium for analysis and monitoring at several levels including: (1) Epidemiologic monitoring of patient outcomes such as mortality, morbidity, and disability; (2) local area analyses to identify problems in both patient outcomes and health care processes; and (3) analysis and monitoring of both outcomes and processes of care at the institution or medical care plan level.

In response to the needs highlighted at the symposium, HCFA has developed the Quality of Care MEDPAR file (QC/MEDPAR) to increase the amount of data available for quality and effectiveness of care research. Our purpose is to assist researchers in developing and applying improved measures for determining the quality and effectiveness of care furnished in hospitals participating in the Medicare program. The development and release of the QC/MEDPAR file is in keeping with HCFA's commitment to the improvement of the quality of health care practiced in the United States and, foremost, that given to Medicare and Medicaid beneficiaries. This purpose is also compatible with a purpose for which the data in the Medicare Bill File are collected, namely, to promote study of the operation and effectiveness of the Medicare program. We would note that similar use of Medicare data is made for patient outcome assessment research authorized under section 1875(c) of the Social Security Act, as enacted in 1986 by section 9316 of Pub. L. 99-509.

We are proposing to include in the QC/MEDPAR file the data elements listed in Appendix A of the system notice. Research on the quality and the effectiveness of care provided in the hospital inpatient setting requires detailed information on a patient-specific basis. Accurate assessment of the outcomes of care (such as mortality, morbidity, and disability) requires that it be possible to track individual patients over time. Therefore, linkage of multiple episodes of care is necessary in order to evaluate an entire episode of care, or the entire course of a disease or the treatment of disease. This is especially true for chronic diseases, such as cancer, heart disease, or diabetes, where the course of the disease may run over months or years. In order to meet this need, the QC/MEDPAR file will include encrypted health insurance claim numbers with the same encrypted number used for all records pertaining to a particular individual. These encrypted numbers will enable an individual's entire history of inpatient care to be linked and studied as a single entity, while concealing that individual's identity.

Similarly, it is necessary to include geographical information in the file to enable small area variations analyses. Many studies have documented wide variations across geographic areas in hospitalization rates and use of surgical procedures that cannot be accounted for by the health status of the resident population. Assessment of the reasons for these variations requires that the

records contain a geographic variable. County codes are insufficient for this purpose because medical service areas (those areas from which individual hospitals get their patients) cross county boundaries and there may be multiple service areas within single counties. The inclusion of ZIP Codes will enable researchers to develop service area analyses which can more closely approximate the real medical service areas at the local level.

In order to protect the privacy of Medicare beneficiaries, we have where possible removed, coded, or encrypted data elements in the QC/MEDPAR file to reduce the likelihood that specific individuals will be identified with information in the file. The file does not contain beneficiary name or race; each beneficiary's health insurance claim number has been encrypted; the exact age of beneficiaries is obscured by use of age intervals; and all dates have been modified by adding or subtracting 1 to 20 days from the actual dates. The file will be national in scope; no subsets of the file will be provided.

As a further precaution, we are requiring recipients of the data file to agree in writing not to link the data to any other beneficiary-specific records to use the data to identify individuals. We will release the data only upon receipt and approval of a research plan specifying the objectives of the research, the manner in which the data will be used, the financial support for the plan, and the date the research will be completed. Recipients will also be required to agree not to use the data for purposes other than quality and effectiveness of care research. The file may not be used for purposes such as marketing (e.g., identification and targeting of under- or over-served health service markets primarily for the purposes of commercial benefit), insurance (e.g., targeting marketing areas, or redlining areas deemed to offer bad health insurance risks), or adverse selection (e.g., identifying patients with high-risk diagnoses). In addition, recipients will have to establish appropriate safeguards to protect the confidentiality of the data and prevent unauthorized access to it.

We are proposing that the following routine use for release of the QC/MEDPAR file be added to the current system notice for system number 09-70-0005.

(7) With respect to the QC/MEDPAR file, to entities with a legitimate need for data for the purpose of conducting research on the quality and effectiveness of care provided in hospitals. Research using data released

under this routine use must focus on the improvement of measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR file may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A;

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. The entity must submit and HCFA must approve:

(1) A research plan specifying the objectives of the research, the manner in which the data will be used, the financial support for the plan, and the date the research will be completed; and

(2) A copy of any report by a panel of recognized experts reviewing the research plan (where such review has been performed).

d. The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to research on the quality and effectiveness of hospital inpatient care, including but not limited to: marketing (identification and targeting of under- or over-served health service markets primarily for the purposes of commercial benefit), insurance (redlining areas deemed to offer bad health insurance risks), and adverse selection (identifying patients with high-risk diagnoses);

(3) Not to disclose the data to any persons unless the data are in

aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HCFA;

(4) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at the completion of the research plan.

The new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, it is compatible with the purpose for which the information is collected. Because the addition of this new routine use will not change the purposes for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(o). The entire systems notice is published below. Please note that since this notice was last published in its entirety, it has been updated several times for both specificity and for changes required by the Department of Health and Human Services. These additions, previously published in the *Federal Register*, are being included at this time to furnish readers a notice that is correct and complete.

Dated: April 27, 1988.

William L. Roper,
Administrator, Health Care Financing
Administration.

09-70-0005

SYSTEM NAME:

Medicare Bill File (Statistics) HHS, HCFA, BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Systems Operations, OS, SSA, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in hospital insurance or supplemental medical benefits parts of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bill data; demographic data on the beneficiary; diagnosis and surgery codes provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 1395ll).

PURPOSE(S):

To study the operation and effectiveness of the Medicare program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made: (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) To the Bureau of Census for use in processing research and statistical data directly related to the administration of Social Security programs.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS or any component thereof; or
(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or

the restoration or maintenance of health if HCFA;

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(5) To entities with a legitimate need for data for statistical analyses bearing on Medicare payment policies for inpatient hospital services. Information disclosed for this purpose will not include a beneficiary's health insurance claim number, race, or Medicare status code; the beneficiary's age will be identified only by age intervals; the beneficiary's residence will be identified only to the extent of stating whether he or she resides in the same State as the provider, the admission and discharge

dates will be identified only by calendar quarter; and the date of surgery will be identified only as the number of days after admission.

Each of the Medicare Provider Analysis and Review (MEDPAR) files—short-stay hospital services file, long-term hospital services file, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provisions for release. The entity must agree:

(a) Not to try to identify individual beneficiaries.

(b) Not to disclose raw data to any persons except contractors for data processing and storage (and it must agree to require any such contractor not to release any data and not to retain any data after performing the contract).

(c) Not to link this information to other beneficiary-specific records,

(d) Not to publish or otherwise disclose data in a form raising unacceptable possibilities that beneficiaries could be identified, and

(e) To safeguard the confidentiality of the data and to try to prevent unauthorized access to it.

(6) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

(7) With respect to the QC/MEDPAR file, to entities with a legitimate need for data for the purpose of conducting research on the quality and effectiveness of care provided in hospitals. Research using data released under this routine use must focus on the improvement of measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR file may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A;

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. The entity must submit and HCFA must approve:

(1) A research plan specifying the objectives of the research, the manner in which the data will be used, the financial support for the plan, and the date the research will be completed; and

(2) A copy of any report by a panel of recognized experts reviewing the research plan (which such review has been performed).

d. The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to research on the quality and effectiveness of hospital inpatient care, including but not limited to: marketing (identification and targeting of under- or over-served health service markets primarily for the purposes of commercial benefit), insurance (redlining areas deemed to offer bad health insurance risks), and adverse selection (identifying patients with high risk diagnoses);

(3) Not to disclose the data to any persons unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor; and

(b) The contractor has signed a confidentiality statement with HCFA;

(4) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could not be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a

level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of any aggregation of the data intended for publication to HCFR for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at completion of the research plan.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic tape.

RETRIEVABILITY:

All records are indexed by health insurance claim number and by hospital provider number

SAFEGUARDS:

For computerized records, safeguards established in accordance with

Department standards and National Bureau of Standards guidelines (e.g., security codes) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGERS) AND ADDRESS:

Director, Bureau of Data Management and Strategy, Room 2424, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

For purpose of access, write the systems manager, who will require name of system, health insurance claim number and for verification purposes, name (women's maiden name, if applicable), social security number, address, date of birth and sex; and to ascertain whether the individual's record is in the system, utilization and date of utilization under Part A or Part B of Medicare services, home health agency, hospital (inpatient), hospital (outpatient) or skilled nursing facility.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought (These access procedures are in accordance with the Department Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Medicare enrollment records: Medicare bill records: Medicare provider records for a sample of persons treated as hospital patients (inpatient and outpatient) and skilled nursing facility patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. HI Claim Number	Encrypted to protect the identity of the beneficiary	To determine the number of stays for a beneficiary.
2. Age	Age intervals to protect the identity of the beneficiary... under 25 25-44 45-64 65-69 70-74 75-79 80-84 85+	To measure age-based differences.
3. Sex	—male	To measure sex-based differences.
	—female	
	—unknown	
4. Medicare Status Code	Code to show reason for beneficiary's entitlement..... —aged without ESRD —aged with ESRD —disabled without ESRD —disabled with ESRD —ESRD only	To examine effectiveness of care for different categories of Medicare beneficiaries.
5. Discharge Destination.....	—To home, self care..... —To short-term hospital —To SNF —To other type facility —To home health service —Left against medical advice —Died —Still a patient	To group stays into Diagnosis Related Groups (DRGs).
6. Medicare Provider Number	Identification number of hospital.....	To allow for review of care on an institution-specific basis.
7. Date of Admission	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
8. Date of Discharge	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
9. Length of Stay	Number of days in hospital stay	To examine days of care.
10. Intensive Care and Coronary Care Days	Days in special care units of hospitals	To measure outcomes in and use of special care units.
11. Total Charges	All charge fields (fields 11-21) are in whole dollars	Charge fields 11-21 are included to measure relative resource use across cases.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
12. Routine Accommodation Charges		
13. Intensive Care and Coronary Care Charges		
14. Total Departmental (Ancillary) Charges		
15. Operating Room Charges		
16. Pharmacy Charges		
17. Laboratory Charges		
18. Radiology Charges		
19. Supplies Charges		
20. Anesthesia Charges		
21. Inhalation Therapy Charges		
22. Principal Diagnosis	ICD-9-CM Code	Fields 22-25 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Additional Diagnoses	Up to 4 ICD-9-CM codes	
24. Principal Surgical Procedure Code	ICD-9-CM Volume 3	
25. Additional Surgery	Up to 2 ICD-9-CM Volume 3 codes	
26. Date of Surgery	Date plus/minus 1 to 20 days*	
27. Blood Furnished	Number of pints	To measure intervals between admission/discharge and surgery.
28. Diagnosis Related Group	DRG1-DRG475	To measure outcomes.
29. Date of death	Date, plus/minus 1 to 20 days*	To define diagnostic groups used in the Prospective Payment System.
30. Urban/rural residence	1=urban 2=rural	To determine mortality rates.
31. Zip Code	5 digit zip	To examine variations in care in urban and rural areas.
		To examine variations in care in small areas.

*The same random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from 1 through 20.

[FR Doc. 88-9700 Filed 5-2-88; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Advisory Committee to the Director; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on June 27-28, 1988, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8:30 a.m. to 5:00 p.m. on June 27, and from 8:30 to approximately 11:45 a.m. on June 28, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussions of "The Health of Biomedical Research Institutions—Report of the Regional Meetings."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496-3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-9763 Filed 5-2-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Advisory Board meeting which was published in the Federal Register (53 FR 13450) on April 25, 1988.

The Subcommittee on Cancer Centers, scheduled for May 8, 6 p.m., Building 31C, Conference Room 7 is being changed to May 10, 8 a.m., Building 31C, Conference Room 7. This Subcommittee is being rescheduled due to conflicting schedules of members. Therefore, the Subcommittee on Special Actions for Grants, scheduled for 8:30 a.m. will commence at approximately 9 a.m.

The Subcommittee on Cancer Control for the Year 2000, scheduled for May 9, 6:15 p.m., Building 31C, Conference Room 8, is being cancelled due to conflicting schedules of members.

The full meeting of the AIDS Subcommittee, originally scheduled to be opened from 7:30 p.m. to adjournment, will now be open from 7:30 p.m. to approximately 8:30 p.m. followed by a closed session to discuss the pre-publication scientific results of an AIDS paper to be published in June. This meeting will be closed under section 552(b)(4) of Title 5, U.S.C., and sec. 10(d) of Pub. L. 92-463 as these discussions could reveal confidential trade secrets or commercial property.

Dated: April 28, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-9764 Filed 5-2-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological and Communicative Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Disorders Program Project Review B Committee, National Institute of Neurological and Communicative Disorders and Stroke, June 8-10, 1988, Holiday Inn, 555 C Street SW., Washington, DC, which was published in the Federal Register on April 4, 1988 (52 FR 10950).

This committee was to have convened at 8:30 a.m. on June 8, but has been changed to 7:00 p.m. on June 8, 1988.

The meeting will be open to the public from 7:00 p.m. to 7:30 p.m. and will be closed from 7:30 p.m. to adjournment for the review of grant applications.

Dated: April 21, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-9765 Filed 5-2-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

April 21, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., June 27, 1988.

The plat (in 2 sheets) representing the dependent resurvey of portions of the Second Standard Parallel South (south boundary), subdivisional lines, certain homestead entry surveys, and certain mineral surveys, the extension survey of portions of the Second Standard Parallel South (south boundary) and subdivisional lines, and the subdivision of certain sections, T. 10 S., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 783, was accepted April 13, 1988.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-9686 Filed 5-2-88; 8:45am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-725840

Applicant: Scott Little, Atlanta, GA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, South Africa, for the purpose of enhancement of the survival of the species.

PRT-726976

Applicant: Wildlife Reserve of Western Canada, Cochrane, Canada

The applicant requests a permit to import and reexport one male northern swift fox (*Vulpes velox hebes*) to

educate the public about the ecological role and conservation needs of the species and for display at an endangered species convention in Boston, Massachusetts.

PRT-726761

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import one male and two female captive born yellow-footed rock wallabies (*Petrogale xanthopus*) from the Royal Zoological Society of South Australia, Adelaide, South Australia for the purpose of establishing a second captive breeding group in the United States.

PRT-727175

Applicant: Lonnie Woosley Florence, OR

The applicant requests a permit to import two female Hawaiian (=nene) geese (*Nesochen* (= *Branta*) *sandvicensis*) born in 1986 and 1987 from Dave Rempel, Maple Ridge, B.C., Canada for enhancement of propagation.

PRT-727025

Applicant: Ringling Bros.—Barnum and Bailey Circus, Washington, DC

The applicant requests a permit to reexport to Japan and reimport a female Asian Elephant (*Elephas maximus*) originally imported in 1973, country of origin unknown, now owned by Scott Riddle, Washington, MI, for enhancing the propagation or survival of the species through educating the public about the ecological role and conservation needs of the species.

PRT-714174

Applicant: Ohio State University, Columbus, OH

The applicant requests a permit to import up to 150 intestinal biopsies and 50 blood samples taken from wild cotton-top marmosets (*Saguinus oedipus*) at Sambrano, Sucre Province, Colombia. Applicant wishes to import these blood and tissue samples for purposes of scientific research and enhancement of the propagation of the species.

PRT-704301

Applicant: Jan Giacinto & Dirk Arthur, Exotic Animals, Tarzana, CA

The applicant requests a permit to export and reimport one pair of captive born tigers (*Panthera tigris*), along with the previously permitted male tiger, male jaguar (*Panthera onca*) and pair of leopards (*Panthera pardus*), for performance in an illusionist show, during which the applicant intends to educate the public with regard to each of the above species' ecological role and conservation needs.

PRT-727165

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to improve one captive born female Bawean deer (*Axis* (= *Cervus*) *porcinus kuhli*) from L. Ruhe KG, West Germany to be included as a part of their reproductive group.

PRT-727201

Applicant: Toledo Zoological Society, Toledo, OH

The applicant requests a permit to import two male and two female captive born cheetahs (*Acinonyx jubatus*) from the Cheetah Research and Breeding Center, Pretoria, South Africa for the purpose of enhancement of propagation.

PRT-729822

Applicant: Dallas Zoo, Dallas, TX

The applicant requests an amendment to their application for the import of tuataras (*Sphenodon punctatus*) from New Zealand. Rather than one pair of wild tuataras, the applicant would like to import 6-8 captive-hatched juveniles, currently being held at Victoria University, Wellington, New Zealand. The tuataras will be utilized in a captive breeding program at the Dallas Zoo.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: April 28, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-9784 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Agency Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the

proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, 20503, telephone 202-395-7340.

Title: Payor Information Form (PIF) Oil and Gas.

Abstract: Data collected on the PIF are used to establish payor accounts for all mineral leases on Federal and Indian lands using accounting identification numbers assigned by the Minerals Management Service (MMS). The MMS is then able to maintain, reconcile and audit lease accounts through the use of its computerized Auditing and Financial System. This information will enable MMS to determine payors responsible for paying rentals and royalties to MMS and the percentage of sales or production on which royalties are to be paid.

Bureau Form Number: MMS-4025.

Frequency: On occasion.

Description of Respondents: Oil and gas lessees, onshore and offshore.

Annual Responses: 32,800.

Annual Burden Hours: 16,400.

Bureau Clearance Officer: Dorothy Christopher, 703-435-6213.

Date: March 28, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 88-9688 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore 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 Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7780, Block 276, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Fouchon and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 22, 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: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 25, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-9687 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Land and Water Conservation Fund; State Plan Preparation, Procedures and Eligibility

AGENCY: National Park Service, Interior.

ACTION: Notice; Land and Water Conservation Fund.

SUMMARY: Notice is hereby given that the National Park Service is considering a revision to its policy regarding State plan preparation, procedures, and eligibility under the Land and Water Conservation Fund (L&WCF) Act of 1965, as amended (Pub. L. 88-578). The revision will be issued as a new manual release covering chapter 630.1 of the L&WCF Grants-In-Aid Manual (NPS-34).

DATE: Comments submitted within 60 days of this announcement will be considered.

ADDRESS: Copies of the proposed policy revision are available on request from the following location: National Park Service, Recreation Resources Assistance Division (765), P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT:

Einar S. Olsen or Paul Solomon of NPS—Recreation Resources Assistance Division at the address given above; telephone 202/343-3780 or (FTS) 343-3780.

SUPPLEMENTARY INFORMATION: Section 6d, L&WCF Act of 1965 as amended: Pub. L. 88-578; 78 Stat. 897; 16 U.S.C. 4601-4, et seq.

Robert Stanton,

Acting Director.

[FR Doc. 88-9690 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 23, 1988. Pursuant to § 60.13 of 36 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 May 18, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Pulaski County

Little Rock, Governor's Mansion Historic District (Boundary Increase), Roughly bounded by Louisiana St., Twenty-Third St. and Roosevelt Rd., Chester and State Sts., and Thirteenth and Twelfth Sts.

GEORGIA

Carroll County

Bowden, Lovvorn, Dr. James L., House, 113 E. College St.

Echols County

Statenville, Statenville Consolidated School, GA 94

Rabun County

Tallulah Falls, Tallulah Falls Depot, US 441

Thomas County

Thomasville, Thomasville Depot, 420 W. Jackson St./US 319

GUAM

Talofofo, Aratama Maru, Talofofo Bay

MICHIGAN

Mason County

Ludington, Mason County Courthouse, 300 E. Ludington Ave.

MINNESOTA**Clearwater County**

Bagley vicinity, *Gran Evangelical Lutheran Church*, CR 92 and CH 20

Hennepin County

Minneapolis, *Holmes, Henry E., House*, 1418 Park Ave., S.

Martin County

Fairmont, *First Church of Christ Scientist*, 222 Blue Earth Ave., E.

MISSOURI**St. Louis County (also in St. Louis (Independent City))**

Clayton and St. Louis, *Wydown—Forsyth District*, Roughly bounded by Forsyth, Skinker Blvd., Fauquier and Wydown Terrace Dr., and University Ln.

Washington County

Potosi vicinity, *Cresswell, George, Furnace*, MO F

NEW JERSEY**Hunterdon County**

Mt. Salem vicinity, *Mount Salem Methodist Episcopal Church*, CR 579

Somerset County

Blawenburg, *Blawenburg Historic District*, Georgetown—Franklin Tpk./CR 588, Great Rd./CR 601, and Mountain View Rd.

NEW YORK**Jefferson County**

Alexandria, *Densmore Methodist Church of the Thousand Islands*, Rt. 100 at Densmore Bay

Nassau County

East Island vicinity, *Shell House, The*, 26 Westland Dr.

Oswego County

Oswego, *Oswego Armory*, 265 W. First St.

Rensselaer County

Troy, *Northern River Street Historic District*, 403-429 and 420-430 River St.

Rockland County

Ramapo, *Torne Brook Farm*, Torne Brook Rd.

Suffolk County

Lloyd Harbor, *Fort Hill Estate*, Fort Hill Dr.

VIRGINIA**Norfolk (Independent City)**

Kenmore, 420 W. Bute St.

WASHINGTON**Clallam County**

Dungeness, *Dungeness School (Rural Public Schools in Washington From Early Settlement to 1945 MRA)*, 657 Towne Rd.

Douglas County

Waterville, *Downtown Waterville Historic District*, Locust and Chelan Sts.

King County

Seattle, *Adams School*, 2637 NW. Sixty-Second St

Lewis County

Centralia, *Centralia Union Depot*, 210 Railroad St.

Pacific County

Seaview, *Schulderman, Peter, House*, Thirty-Seventh and K Sts.

South Bend, *Lumber Exchange Building*, Robert Bush Dr./US 101 and Willapa Ave.

Spokane County

Spokane, *Coolidge—Rising House*, W. 1405 Ninth Ave.

Yakima County

Toppenish, *Yakima Indian Agency Building*, 1 S. Elm

WISCONSIN**St. Croix County**

New Richmond, *Bell, Marcus Sears, Farm (New Richmond MRA)* 1100 Heritage Dr.

New Richmond, *Bernd, William J., House (New Richmond MRA)* 210 Second St., E.

New Richmond, *Bernd, William J., House (New Richmond MRA)* 143 Arch Ave., N.

New Richmond, *Epley, Dr. Frank W., Office (New Richmond MRA)* 137 Third St., E.

New Richmond, *First English Lutheran Church (New Richmond MRA)* 354 Third St., N.

New Richmond, *Glover, Ezra, Jr., House (New Richmond MRA)* 415 Second St., E.

New Richmond, *Kell, William H., House (New Richmond MRA)* 215 Green Ave., S.

New Richmond, *Mielke, Joseph, House (New Richmond MRA)* 326 Second St., W.

New Richmond, *New Richmond News Building (New Richmond MRA)* 145 Second St., W.

New Richmond, *New Richmond Roller Mills Co. (New Richmond MRA)* 201 Knowles Ave., N.

New Richmond, *New Richmond West Side Historic District (New Richmond MRA)*

Roughly bounded by Willow River, Minnesota Ave., W. Second St., S. Washington Ave.

New Richmond, *Soo Line Depot (New Richmond MRA)* 120 High St.

New Richmond, *Thompson, Erick J., House (New Richmond MRA)* 350 Second St., W.

[FR Doc. 88-9691 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION**Release of Waybill Data to Union Pacific Railroad Co. for Use in a Formal ICC Proceeding**

The Commission has received a request from the Union Pacific Railroad Company (UP) for permission to use certain waybill data from the Commission's 1981 through 1986 Waybill Sample. The data sought is for use only by UP's in-house counsel and costing personnel for purposes of evaluating the Commission's selection of a group of comparable traffic and its application of the Revenue to Variable Cost test to that

comparison group in ICC Docket No. 40073, *South-West Railroad Car Parts v. Missouri Pacific Railroad Company*. The data requested are as follows: For each year 1981 through 1986, the following individual movement data for shipments with line hauls between 1-500 miles in the West, having STCC numbers 37-411, 37-422, 37-424 and 40-211: tons, miles, revenue and variable costs. UP is seeking this information through the Federal Register Notice process because under the Commission's waybill release procedures [Ex Parte 385 Sub-No. 2]], confidential waybill data may be released without notice only to the independent consultants, attorneys, and transportation practitioners who represent shippers and railroads in formal ICC and State Commission proceedings. (49 FR 1244.8(b)(4))

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use File that has satisfied the majority of all waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's rules for release of waybill data [Ex Parte 385 (Sub-No. 2), 52 FR 12415, April 16, 1987], we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party.

If any parties object to this request, they should file their objections (an original and 3 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. Objections should identify the parties seeking the waybill data, state the purpose for which the data are sought, and include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275-7684.

Noreta R. McGee,
Secretary.

[FR Doc. 88-9781 Filed 5-2-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-296 (Sub-No. 1X)]

**Robeson County Railroad Corp.;
Discontinuance of Operations
Exemption in Robeson County, NC**

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts the Robeson County Railroad Corporation from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to discontinue the operations of its operating division, the Fairmont and Western Railroad Company, over 12.78 miles of line extending from Elrod to Fairmont in Robeson County, North Carolina, subject to standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective on June 2, 1988. Formal expressions of intent to file and offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 13, 1988.

Petitions to stay must be filed by May 18, 1988, and petitions for reconsideration must be filed by May 31, 1988. Requests for a public use condition must be filed by May 13, 1988. Send pleadings referring to Docket No. AB-296.

ADDRESSES: (Sub-No. 1X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
- (2) Petitioner's representative, Fritz R. Kahn, Suite 1000, 1660 L Street NW., Washington, DC 20036.

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: April 26, 1988.

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

Noreta R. McGee,

Secretary.

[FR Doc. 88-9745 Filed 5-2-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

**Grant Agreements To Provide
Community-Based Special Placement
Programs for Mariel Cuban Detainees
Paroled; Availability of Funding**

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of Funding for Grant Agreements to provide community-based Special Placement Programs for Mariel Cuban detainees paroled or repared by the Immigration and Naturalization Service from various Federal detention facilities.

SUMMARY: This announcement extends the closing date of the Community Relations Service Notice published in the April 12, 1988, edition of the *Federal Register*. The Notice begins on page 12081 of the above referenced edition.

DATE: The closing date is hereby extended to 5:00 p.m., Monday, June 20, 1988.

Date: April 27, 1988.

Robert L. Martinez,

Acting Director, Community Relations Service.

[FR Doc. 88-9732 Filed 5-2-88; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Stipulation and Order
Pursuant to the Clean Water Act;
Metropolitan District Commission et al.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation and Order as to the Commonwealth of Massachusetts ("Commonwealth") and its agency, the Metropolitan District Commission ("MDC"), in *United States v. Metropolitan District Commission, et al.* (Boston Harbor), has been lodged with the United States District Court for the District of Massachusetts. The Stipulation and Order settles the United States' claims against the Commonwealth and MDC for civil penalties for violations of the Clean Water Act in connection with the Boston metropolitan area sewage treatment system prior to July 1, 1985.

The proposed Stipulation and Order requires the Commonwealth and MDC to pay a cash penalty of \$425,000 and to pay \$2,000,000 for specified Boston Harbor remedial projects, which include marsh restoration investigations, beach cleanup activities, and a study of contamination of the Boston Harbor—Massachusetts Bay—Cape Cod Bay estuarine system. The United States Environmental Protection Agency believes that the bulk of the point source discharges to this estuarine system have been from the Boston metropolitan area sewage treatment system and that the study will be an important first step to assist in determining and evaluating potential remedial actions to improve the water and sediment quality of Boston Harbor and its estuary.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation and Order. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Metropolitan District Commission, et al.* (Boston Harbor), D.J. Reference #90-5-1-1-2310.

The proposed Stipulation and Order may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack P.O. & Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Stipulation and Order may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave. NW., Washington, DC 20530. A copy of the proposed Stipulation and Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to *United States v. Metropolitan District Commission, et al.* (Boston Harbor), D.J. Reference #90-5-1-1-2310 and enclose a check in the amount of \$1.80 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-9714 Filed 5-2-88; 8:45 am]

BILLING CODE 4410-01-M

¹ See *Exempt or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48,440-48,446).

Antitrust Division**National Cooperative Research Act of 1984; NAHB Research Foundation; National Cooperative Research Act of 1984; Smart House Project**

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"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on April 5, 1988 disclosing (1) the identities of one additional party and nine additional advisors to the Smart House Project,

Party

Canada Wire & Cable

Advisors

American Electric Power Service Corp.
Arkla, Inc.
Columbia Gas Distribution Companies
Consolidated Natural Gas Company
Consumers Power Company
Edison Electric Institute
Houston Electric Institute
Houston Lighting & Power Company
Kansas Gas & Electric Company
Minnesota Blue Flame Gas Asso.;

(2) the identities of two parties and three advisors that no longer are involved in the Smart House Project,

Parties

National Semiconductor Corporation
NOMA Incorporated

Advisors

Bell Communications Research, Inc.,
The Bell Telephone Company of Pennsylvania,
The Dayton Power and Light Company;
and

(3) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of current parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following are current parties and have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.

Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.
Bose Corporation
BRInTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Canada Wire & Cable
Carrier Corporation
Challenger Electrical Equipment Corp.
Dukane Corporation
E.I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer, Ltd.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
North American Phillips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
American Electric Power Service Corp.
American Gas Association
Arkla, Inc.
Baltimore Gas & Electric Company
Bell Canada
Bell South Services
Boston Edison Company
Clark/Van Voorhis Architects, Inc.
Columbia Gas Distribution Companies
Consolidated Natural Gas Company
Consumers Power Company
Cooper Development Association Inc.
Delmarva Power and Light Company
Detroit Edison Company
Duke Power Company
Edison Electric Institute
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Houston Lighting & Power Company
Hydro Quebec

Illinois Consolidated Telephone Co.
International Conference of Building Officials
Kansas Gas & Electric Company
Minnesota Blue Flame Gas Asso.
National Association of Home Builders
National Cable Television Association
Northern Illinois Gas
Oklahoma Gas & Electric Company
Ontario Hydro
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwest Gas
Southwestern Bell Telephone Company
U.S. Dept. of Housing & Urban Dev.
U.S. West
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, and February 22, 1988, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), On May 16, 1986 (51 FR 18049), On August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52

FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 186), and on March 21, 1988 (53 FR 9154), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772-8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-9742 Filed 5-2-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Amended Due Date Procedures for Preapplication for Funds; Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of amended due date.

SUMMARY: On April 12, 1988 in 53 FR 12088 a notice was published in the *Federal Register* setting forth the procedures for obtaining a preapplication for funds for the operation of a Homeless Veterans' Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738. This notice amends the due date for submittal of a completed preapplication package.

DATE: A preapplication package and instructions for completion was available for issuance as of April 15, 1988. The amended closing date for receipt of a completed preapplication package in response to this notice is May 13, 1988.

ADDRESS: A copy of the preapplication package and instructions for completion may be obtained by written request only, including two self-addressed mailing labels, to: U.S. Department of Labor, Office of Procurement Services, Rm. S5220, 200 Constitution Ave. NW., Washington, DC 20210, Attention: Melvin Goldberg, Reference: PAG-01.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Chudd, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave. NW., Rm. S1313, Washington, DC 20210, Telephone (202) 523-2752.

SUPPLEMENTARY INFORMATION: Supplementary information published in the April 12, 1988 *Federal Register* notice on procedures for preapplication for funds under the Stewart B. McKinney

Homeless Assistance Act, Title VII, Subtitle C, Section 738, Fiscal Year 1988 is unchanged by this notice.

Signed at Washington, DC, this 28th day of April, 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88-9804 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-79-M

Employment Standards Administration, Wage and Hour Division

Child Labor Advisory Committee; Subcommittee Meeting on Hazardous Occupations Order No. 10

The Child Labor Advisory Subcommittee members who will consider topics concerning Hazardous Occupations Order No. 10 will meet on May 18, 1988, from 8:00 a.m.-5:00 p.m. to conduct on-site visits at two meat processing and packing plants, and a retail establishment that uses power-driven meat slicers.

On May 19, 1988, this Subcommittee will convene at the Department of Labor, Frances Perkins Building, Room N3437 A, 200 Constitution Avenue NW., Washington, DC, from 9:00 a.m.-5:00 p.m. The discussion will focus on whether a recommendation is necessary with respect to the scope of this Hazardous Order; whether current definitions under this Order need to be refined; and whether specific machinery should or should not be covered by this Order.

Members of the public are invited to attend the meeting. Individuals wishing to submit written data, reviews, or arguments pertaining to the business before the Subcommittee should submit them to the Child Labor Advisory Committee Coordinator prior to the meeting date. Twenty-six copies are needed for distribution to the members and for inclusion in the Subcommittee report.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila J. Stovall, Coordinator for the Child Labor Advisory Committee, (202) 523-7640.

Signed at Washington, DC, this 27th day of April, 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88-9799 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-20,484]

Bethlehem Rebar Industries, Inc., Corporate Headquarters, Lehigh Valley, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 29, 1988 in response to a worker petition which was filed on behalf of workers at Bethlehem Rebar Industries, Incorporated.

The petition was filed by former workers of the Houston, Texas plant of Bethlehem Rebar Industries, Incorporated. An investigation on behalf of workers of the Houston location was initiated on February 29, 1988 in response to the petition, TA-W-20,483. Subsequent to the initiation of that investigation, another investigation was erroneously initiated on behalf of the Corporation's headquarters in Lehigh Valley, Pennsylvania.

The petitioning workers did not intend to file on behalf of the headquarters. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of April 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 9802 Filed 5-2-88; 8:45 am]

BILLING CODE 4810-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, Budget Dress Co. 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 May 13, 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 May 13, 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 25th day of April 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
Budget Dress Co. (Workers).....	Secaucus, NJ.....	4/25/88	4/5/88	20,621	Ladies' dresses.
Complete Auto Transit (TDCH).....	Cincinnati, OH.....	4/25/88	4/8/88	20,622	Auto transport.
Huron Forge & Machine Co. (UAW).....	Detroit, MI.....	4/25/88	4/8/88	20,623	Forgings.
Island Creek Coal Co., Gauley Div. (Workers).....	Craigsville, WV.....	4/25/88	4/12/88	20,624	Coal.
Iwaki Corp. (Workers).....	Fairfield, NJ.....	4/25/88	4/6/88	20,625	Chemical pumps.
Kitt Energy Corp. (Workers).....	Fredericktown, PA.....	4/25/88	4/14/88	20,626	Coal.
Rio Algom mining Corp./La. Sal Mine (Workers).....	Moab, UT.....	4/25/88	4/14/88	20,627	Uranium.
Scotts Branch Mine (UMWA).....	Pikeville, KY.....	4/25/88	4/12/88	20,628	Coal.
Seco Tools, Inc. (Workers).....	Fairfield, NJ.....	4/25/88	4/14/88	20,629	Metal cutting tools.
Tanoma Mining Co. (UMWA).....	Marion Center, PA.....	4/25/88	12/29/88	20,630	Coal (steam and metallurgical).
W.C.I., Belding Products Co., Home Company Div. (UAW).....	Belding, MI.....	4/25/88	4/15/88	20,631	Air conditioners and refrigerators.
W.C.I., Greenville Products Co., Refrigerators Div. (UAW).....	Greenville, MI.....	4/25/88	4/15/88	20,632	Do.
Westinghouse Electric (Workers).....	Pittsburgh, PA.....	4/25/88	4/18/88	20,633	Rapid transit equipment.

[FR Doc. 88-9801 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Pressure Cast, Ltd., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 18, 1988-April 22, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,493; Pressure Cast, Ltd, Grafton WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,478; Martino Mfg. Co., Mt. Bethel, PA

U.S. imports of infants, toddler and childrens woven blouses declined absolutely in 1987 compared to 1986.

TA-W-20,521; Bethlehem Mines Corp., Hanover Quarry, Hanover, PA

U.S. imports of crushed limestone are negligible.

TA-W-20,482; 3M Company, Rochester, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-20,489; Lectromelt Corp., Pittsburgh, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,475; Charles of the Ritz Group Limited, Holmdel, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,501; Control Data Corp., Magnetic Peripherals, Inc., Minnetonka, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,471; Bell Helicopter Textron, Inc., Amarillo, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,492; Paccar Defense Systems, Renton, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,483; Bethlehem Rebar, Industries, Inc., Houston, TX

U.S. imports of concrete reinforcing bar, which includes fabricated concrete reinforcing bar declined absolutely and relative to domestic shipment in 1987 compared to 1986.

TA-W-20,473; *Bristol Steel & Iron Work, Inc., Plants Number Two and Number Three, Bristol, VA*

U.S. imports of fabricated structural steel declined absolutely in the first three quarters of 1987 compared to the same period in 1986.

Affirmative Determinations

TA-W-20,476; *General Electric Co., Carroll, IA*

A certification was issued covering all workers of the firm separated on or after February 8, 1987.

TA-W-20,479; *Taylor Lock Co., Philadelphia, PA*

A certification was issued covering all workers of the firm separated on or after February 8, 1987.

TA-W-20,497; *Vermont Marble Co., Proctor, VT*

A certification was issued covering all workers of the firm separated on or after September 1, 1987.

TA-W-20,469; *A.E. Staley Manufacturing, Caribou, ME*

A certification was issued covering all workers of the firm separated on or after February 5, 1987.

TA-W-20,480; *Universal Match Corp., Hudson, NY*

A certification was issued covering all workers related to the production of paper bookmatches separated on or after April 1, 1988.

I hereby certify that the aforementioned determinations were issued during the period April 18, 1988-April 22, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 28, 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-9800 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,494]

Southwestern Sunbelt Cement Co., El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

According to section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on April

5, 1988 to all workers of the Sacking Division of Southwestern Sunbelt Cement Company, El Paso, Texas. The Notice of Certification was published in the *Federal Register* on April 19, 1988 (53 FR 12833).

The company informed the Department that a few workers were laid off a few days before the January 4, 1988 impact date. It is the Department's intent to include all workers as eligible to apply for adjustment assistance who were laid off from the Southwestern Sunbelt Cement Company, El Paso, Texas.

The amended certification for TA-W-20,494 is hereby issued as follows:

All workers of the Sacking Division of Southwestern Sunbelt Cement Company, El Paso, Texas who became totally or partially separated from employment on or after December 15, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of April 1988.

Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial Services, U.S.

[FR Doc. 88-9803 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice provides the date, time, place and agenda summary for the fifth meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 8:30 a.m. and 5:00 p.m. on May 24 and 25 at the Salt Lake Hilton, 150

West 500 South, Salt Lake City, Utah 84101, phone (801) 532-3344.

This nine-member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesel equipment in underground coal mines.

The agenda for this meeting will include discussions on the subcommittee report on health recommendations, and recommendations on the safety and approval issues. The United Mine Workers of America will present several speakers to address the Advisory Committee about the experiences of rank-and-file union members who work in underground coal mines where diesel equipment is used.

Official records of the meeting will be available for public inspection at the Office of Technical Support, Mine Safety and Health Administration, Room 913A, 4015 Wilson Boulevard, Arlington, Virginia; phone (703) 235-1570.

Signed at Arlington, Virginia, this 27th day of April 1988.

David C. O'Neal,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-9729 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Monday, May 16, 1988, in Room N-4437B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This seven member work group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee welfare plans covered by ERISA.

The purpose of the May 16 meeting is to review the proceedings of the April 18 work group meeting; and to examine options available for recommendation to the Advisory Council with respect to reporting and disclosure forms under review. The work group will also take testimony and or submissions from employee representatives, employer

representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before May 12, 1988 to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 12, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits Administration.

Signed at Washington, DC, this 23th day of April, 1988.

[FR Doc. 88-9692 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-44]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: May 25, 1988, 9 a.m. to 5:30 p.m., and May 26, 1988, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Ames Research Center, Room 213, Building 200, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code F, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 24 members.

Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, space station, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 8:30 a.m. to 9:00 a.m. on May 26 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 45 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

Agenda

May 25, 1988

- 9 a.m.—Introductory Remarks.
- 9:15 a.m.—Report to Life Science Strategic Planning Study Committee.
- 11 a.m.—Life Science Program Overview.
- 1 p.m.—Advanced Launch System Briefing.
- 2 p.m.—Radioisotope Thermoelectric Generator Briefing.
- 4 p.m.—NAC Committee Reports.
- 5:30 p.m.—Adjourn.

May 26, 1988

- 8:30 a.m.—Closed Session.
- 9 a.m.—Aeronautics Policy, Strategy, and Program Overview.
- 1 p.m.—Tour of Facilities.
- 3 p.m.—Adjourn.

April 26, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-9701 Filed 5-2-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Task Force on Women, Minorities, and the Handicapped in Science and Technology; Change of Date and Location of Meeting

The meeting of the Task Force on Women, Minorities, and the Handicapped in Science and

Technology, previously scheduled for May 5, 1988 at the Community College of Baltimore, Baltimore, Maryland, has been changed to May 24, 1988, from 9:00 a.m. to 5:00 p.m., at the Department of Health and Human Services, First Floor Auditorium, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. The meeting is open to the public. For further information contact Sue Kemnitzer, Executive Director, at (202) 245-7477.

Sue Kemnitzer,

Executive Director.

April 27, 1988.

[FR Doc. 88-9761 Filed 5-2-88; 8:45 am]

BILLING CODE 7555-01-M

Statement of Organization, Functions, and Delegations of Authority

AGENCY: National Science Foundation.

ACTION: Notice of Amendment to Statement of Organization, Functions, and Delegations of Authority.

SUMMARY: In accordance with the Administrative Procedures Act (5 U.S.C. 551 et seq.), this notice amends the Statement of Organization published at 52 FR 1540-1549 of January 14, 1987, as amended by 52 FR 49216 of December 30, 1987.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: M. Rebecca Winkler, National Science Foundation, Division of Personnel and Management, Room 208, Washington, DC 20550, telephone 202-357-9520.

A. Staff Offices

The Division of Audit and Oversight in the Office of Budget, Audit and Control became a staff office and was renamed the Office of Audit and Oversight (OAO). The Office of Budget, Audit and Control (OBAC) was redesignated the Office of Budget and Control (OBAC).

B. Directorates

Directorate for Biological, Behavioral, and Social Sciences (BBS)

The Directorate was reorganized and now consists of the Office of the Assistant Director and six divisions. The changes are as follows:

The Office of Interdirectorate Research Coordination was abolished and the responsibilities assumed by the new Division of Instrumentation and Resources (DIR). Functions of the preexisting divisions changed slightly with the shift of programs to DIR.

The new division was established in response to the need for a coordinated

activity of infrastructure and research resource programs. The division is responsible for both internal and external infrastructure activities, including support for instrumentation and instrument development, biological facilities centers, and other biology facility programs, and also includes the coordination of all cross-directorate programs, maintenance and improvement of all BBS ADP systems and information management, as well as training for automated systems.

There was also a realignment of some programs between the Divisions of Molecular Biosciences and Cellular Biosciences to establish closer scientific connections with the communities they represent and to foster scientific coordination of relevant research results.

Directorate for Science and Engineering Education

The Office of Undergraduate Science, Engineering, and Mathematics Education (USEME) was established, subsuming the Office of College Science Instrumentation (OCSI). USEME is responsible for managing and coordinating the NSF-wide undergraduate education support activities and promoting understanding and support for undergraduate education throughout the scientific communities. The Office supports and/or coordinates projects whose purpose is to improve the quality of undergraduate education in science, mathematics, and engineering through programs for faculty, students, curriculum development, laboratory development, course development, instrumentation, and equipment.

Jeff Fenstermacher,
Assistant Director for Administration.
Date: April 27, 1988.

[FR Doc. 88-9762 Filed 5-2-88; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-249]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 25, issued to Commonwealth Edison Company (the licensee), for operation of

the Dresden Nuclear Power Station Unit 3 located in Grundy County, Illinois.

The amendment would amend the Technical Specifications to correct the discrepancy between the Table 3.2.2 value for the 4KV emergency bus undervoltage trip (3092V) and the current trip value (2930V). It has been determined that the value in Table 3.2.2 is not consistent with the engineering and design basis upon which the actual trip value is based.

This amendment request is consistent with the NRC letter dated March 25, 1988 granting a temporary waiver of compliance.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 2, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to D. R. Muller: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this Federal Register notice).

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the NRC letter to Commonwealth Edison Company dated March 25, 1988 confirming a temporary waiver of compliance and the application for amendment dated March 28, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Project.

[FR Doc. 88-9735 Filed 5-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The amendment would change the Technical Specifications to delete Safety Limit 2.1.E which requires at least two recirculation loops to be fully open except when the reactor vessel head is off and vessel water level is above the main steam nozzle. This amendment will also incorporate this limitation in Technical Specification 3.3.F and that limitation be revised to require that at least one recirculation loop instead of two be fully open during applicable plant conditions.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for

each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2000 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 31, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-9734 Filed 5-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the number of manual initiation functional units (push button switches) of Steam and Feedwater Rupture Control System Instrumentation (SFRCS) required, required for producing a trip, and required to be operable.

The proposed amendment, specifically, would revise Table 3.3-11, Steam and Feedwater Rupture Control System Instrumentation, TS Section 3/4.3.2, Safety System Instrumentation, Steam and Feedwater Rupture Control System Instrumentation, to reflect a reduction to four push button switches from ten.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 2, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who

wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to

intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 26th day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-9736 Filed 5-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to:

(1) The Reactor Coolant System (RCS) pressure-temperature operating limits,

(2) The reactor coolant high pressure trip setpoint and allowable setpoint for the Reactor Protection System instrumentation,

(3) The rated thermal power below which the anticipatory Reactor Trip System (ARTS) turbine trip may be bypassed automatically,

The rated thermal power above which the ARTS turbine trip must be operable and is subject to surveillance requirements, and

(5) The trip and allowable setpoints for the pressurizer electromechanical relief valve.

The proposed amendment, specifically, would revise Figure 2.1-1 of TS section 2.1.3, Table 2.2-1 of section 2.2.1, Tables 3.3-15 and 4.3-15 of TS section 3/4.3.2.3, TS section 3/4.4.3

The proposed amendment also would revise Bases sections 3/4.3.1, 3/4.3.2, 3/4.4.2 and 3/4.4.3 for the above setpoints and operating limits.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this *Federal Register* notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 1, 1988 as supplemented February 26, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library,

Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 26th day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-9737 Filed 5-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the Steam and Feedwater Rupture Control System Instrumentation (SFRCS) Steam Generator Level Functional Unit-low trip and allowable setpoints.

The proposed amendment, specifically, would revise Table 3.3-12, Steam and Feedwater Rupture Control System Instrumentation Trip Setpoints, TS section 3/4.3.2, Safety System Instrumentation, Steam and Feedwater Rupture Control System Instrumentation, to reflect a reduction of the steam generator low level SFRCS trip setpoint from no less than 20 inches to no less than 16.4 inches, and a reduction of the allowable setpoint from no less than 15.6 and 12.9 inches for channel functional test and channel calibration respectively.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 2, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and

petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 26th day of April 1988.

For the Nuclear Regulatory Commission.
Kenneth E. Perkins,
*Director, Project Directorate III-3, Division of
Reactor Projects-III, IV, V and Special
Projects.*

[FR Doc. 88-9738 Filed 5-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

**Virginia Electric and Power Co. (North
Anna Power Station, Unit No. 1);
Exemption**

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. NPF-4, which authorizes operation of the North Anna Power Station, Unit 1 (NA-1), at a steady-state reactor power level not in excess of 2905 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Louisa County, Virginia.

II

10 CFR 50.55a requires that pumps and valves in light water reactor plants be tested to the requirements of Section XI of the ASME Code and that tests be performed in accordance with the inservice testing program submitted for each 10-year interval. These 10-year intervals are calculated from the start date of commercial operation of the facility.

10 CFR 50.55a(g)(4)(ii) requires that licensees update their pump and valve Inservice Testing (IST) programs to the latest approved edition of Section XI of the ASME Code (the code) every 10 years. Since the regulations define the start of the initial 10-year interval as the date of the facility's commercial operation, licensees with multi-unit sites often have the IST program for each unit structured to a different edition of the code. This can create administrative difficulties for the licensee in keeping track of two sets of requirements for only nominal technical differences in testing requirements.

By letter dated March 3, 1988, the licensee requested an exemption to the requirements of 10 CFR 50.55a(g)(4)(ii) which would allow a common IST start date for both NA-1&2. That common start date would be achieved by extending the termination date of the NA-1 IST program to coincide with the termination date of the NA-2 IST program. The NA-1 IST program would

be extended to terminate on December 14, 1990, rather than on June 6, 1988.

III

The Commission's staff has reviewed this request and has determined that a common IST date for NA-1&2 has inherent administrative, technical, and cost-saving disadvantages, for both the licensee and the NRC. The staff has also determined that:

1. Since the units are basically the same, only one IST program would have to be written and submitted by the licensee;

2. The proposed exemption would provide a degree of IST that is equivalent to that required by 10 CFR 50.55a(g)(4)(ii) such that there would be no increase in the risk of failure for operational readiness of pumps and valves whose function is required for safety at these facilities. Accordingly, the underlying purpose of 10 CFR 50.55a(g)(4) will continue to be achieved.

If a common start date were not established, the IST program would be accomplished utilizing two different ASME Code editions. Performing IST at both plants using only one program results in uniform procedures for both plants and can reduce the chance of personnel errors in the performance of the testing requirements.

Although the revision of the NA-1 IST program will be delayed approximately 2 years, the staff believes that the use of a single IST program for both NA-1&2 has distinct advantages in term of manpower requirements and should result in increased plant safety through simplification and standardization of plant testing procedures.

The purpose of the rule is to assure periodic updating of IST practices to conform to advances in industry in order to assure continued operability of pumps and valves required for safe operation. The 10-year cycles were selected as reasonable periods for periodic updating. In the present case, extension of the period for approximately two years would not affect NA-1&2 safety. Changes from updating on June of 1988 are not expected to affect operational capability of pumps and valves whose function is required for safety at NA-1&2. Thus, extension of the updating of the 10-year period until December 1990 is not necessary to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of March 3, 1988 is authorized by law and will not endanger life or property or the common defense

and security, and is otherwise in the public interest and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii). The Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.55a(g)(4) as it relates to the NA-1 120-month inspection interval for inservice examination of components, inservice tests to verify operational readiness of pumps and valves, and system pressure tests.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (April 26, 1988, 53 FR 14873).

A copy of the licensee's request for exemption and supporting documentation dated March 3, 1988, is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of April 1988.

For the Nuclear Regulatory Commission.

Gus C. Linaas,

*Acting Director, Division of Reactor Projects-
I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-9739 Filed 5-2-88; 8:45 am]

BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE
COMMISSION**

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Boston Stock Exchange, Inc.**

April 27, 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:

American Maize Products Co.

Class A Common Stock, \$.80 Par
Value (File No. 7-3257)

Chemical Bank

Adjustable Rate Preferred B, No Par
Value (File No. 7-3258)

CRI Mortgage Investments II, Inc.
Common Stock, \$.01 Par Value (File No. 7-3259)

Cablevision Systems Corporation
Class A Common Stock, \$.01 Par Value (File No. 7-3260)

Templeton Emerging Markets Fund, Inc.
Common Stock, No Par Value (File No. 7-3261)

First Australia Fund, Inc.
Common Stock, \$.01 Par Value (File No. 7-3262)

Lee Enterprises, Inc.
Common Stock, \$2.00 Par Value (File No. 7-3263)

MacGregor Sporting Goods, Inc.
Common Stock, \$.10 Par Value (File No. 7-3264)

Manufactured Homes, Inc.
Common Stock, \$.50 Par Value (File No. 7-3265)

NVRAN, LP
Shares of Beneficial Interest, No Par Value (File No. 7-3266)

Regal Beloit Corp.
Common Stock, No Par Value (File No. 7-3267)

Worldwide Value Fund, Inc.
Common Stock, \$.0001 Par Value (File No. 7-3268)

British Petroleum
Warrants Expiring 1/31/93 (File No. 7-3269)

Global Growth & Income Fund
Capital Shares, \$1.00 Par Value (File No. 7-3270)

Mesa Limited Partnership
Preference A, No Par Value (File No. 7-3271)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-9704 Filed 5-2-88; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Boston Stock Exchange, Inc.**

April 27, 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:

American Southwest Mortgage
Investments Corporation
Common Stock, \$.01 Par Value (File No. 7-3251)

Americus Trust for IBM Shares
Scores, No Par Value (File No. 7-3152)

Dime Savings Bank NY (The)
Common Stock, \$1.00 Par Value (File No. 7-3153)

ACM Government Securities Fund
Common Stock, \$.01 Par Value (File No. 7-3154)

Bank of New England
Common Stock, \$.50 Par Value (File No. 7-3155)

Symbol Technologies, Inc.
Common Stock, \$.01 Par Value (File No. 7-3156)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-9705 Filed 5-2-88; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Pacific Stock Exchange, Inc.**

April 27, 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 security:

Placer Dome, Inc.
Common Stock, No Par Value (File No. 7-3279)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 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, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-9706 Filed 5-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25617; File No. SR-PSE-88-6]

**Self-Regulatory Organizations; Filing
and Immediate Effectiveness of
Proposed Rule Change by the Pacific
Stock Exchange Incorporated Relating
to an Interim Monthly Assessment on
the Membership to Meet Operating,
Technology, and Facilities Needs**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 12, 1988, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II,

and III below, which items have been prepared, in most part, by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to meet its operational, technology, and facilities needs in accordance with the following determinations made by its Board of Governors on March 24, 1988.

The Board of Governors proposes to impose an interim monthly assessment on each of the 551 regular memberships. The assessment consists of two components: A flat assessment and a supplemental activity assessment. The first component is a flat fee of \$600 per month to owners of each of the 551 memberships. The second component is a supplemental activity charge that will be applied differently for Equities and Options members, although the average supplemental charge for each member is \$600 per month.

Members with no floor presence will be charged an activity fee of \$600 per month, since the average monthly activity charge for Equities and Options members is \$600. There will be no assessment on owners of outstanding special memberships.

Membership transfers occurring during the month will be subject to a pro rata charge based on the flat assessment and the supplemental activity charge. For Options members, the supplemental activity charge will be based on the quartile activity ranking for the prior month.

In the event of the sale of a membership both the seller and purchaser shall be liable pro rata for the interim assessment.

The Board of Governors may appoint a special committee to review any questions or disputes arising from the special fee or related matters. Decisions of that committee may be appealed in writing to the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

The self-regulatory organizations has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Governors has concluded that the Exchange will need additional revenues to provide funding for improvements in technological services in order to remain competitive in the industry and at the same time be able to cover its costs of operations. The Board also recognizes that renovation and modernization of the San Francisco Equities trading floor is essential to permit future growth and expansion of services to members. Both the Los Angeles Equities floor and the Options floor in San Francisco have already been upgraded and modernized.

The Board has determined that it needs time to assess the cost and revenue structure of the Exchange, and accordingly has established various committees to examine cost reduction and revenue enhancement measures. Separate committees for Equities, Options, and Technology Services are looking at the efficiency of their respective operations, and the nature of revenue and fee increases to cover the services provided by the Exchange.

Recommendations and decisions of these committees will be reviewed by the Board of Governors. Appeals from a decision of these committees may be made in writing to the Board of Governors.

Other Committees have been established to assess the needs to update the San Francisco Equities floor, and to assess administrative efficiency and cost savings internally throughout PSE departments.

Pending completion of the reviews and recommendations of the Committees, an interim assessment is proposed beginning in April 1988.

The assessment will include a flat fee of \$600 per month for each membership. In addition, Equities members will pay a flat supplemental activity charge of \$600 per month per member. Options members will pay a supplemental monthly fee based on the volume of contracts traded. Options members will be separated by Broker or Market Maker status. Each of the Broker and Market Maker categories will be divided into four groupings based on contract volume. Options Brokers and Market Makers in the group with the highest

contract activity will pay a supplemental charge of \$1,200; those in the next highest group will pay \$800; the third most active group will pay \$400; and Options members in the lowest activity group will not pay any additional charge beyond the flat assessment per member. The average charge for Equities and Options members is \$1,200 per month.¹

The assessment will be reviewed in three months and adjusted in light of volumes on the respective floors and the revenue enhancements and cost-cutting measures implemented. The Committees will report on their progress on cost reduction and revenue enhancing measures at the April meeting of the Board, and will make recommendations on an ongoing basis.²

To ensure implementation of the most equitable assessment among the members, several Governors and PSE staff met with members on various occasions to discuss alternative financing plans and alternative proposals for meeting the Exchange's financial needs.

The Board of Governors held a special membership meeting for all PSE members on March 24, 1988, to provide them with a detailed analysis of the state of the Exchange and its financial needs, and to answer members' questions concerning the proposed interim assessment.

The Board's ultimate decision was based on a careful consideration of comments received from members, Floor Governors, and the Committees.

The proposed special fee is consistent with section 6(b)(4) of the Securities Exchange Act of 1934, which permits the Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

¹ The assessed fee is calculated by ranking market makers and brokers according to their options contract volume for the prior month. The appropriate fee is assessed based on the quartile ranking of the specialist unit with those in the top 25% paying the highest fee of \$1,200 and those in the lowest 25% paying no fee.

² In a letter from John C. Katovich, Vice President and General Counsel, PSE, to Robert J. Sevigny, Attorney-Advisor, dated April 19, 1988, ("April 19 Letter") the PSE stated that any changes or revisions made to the assessment charges will be submitted to the Commission as an additional rule filing pursuant to paragraph (A) of section 19(b)(3) of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were solicited from all members of the PSE.³

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraphs (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.⁴ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at

the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-06 and should be submitted by May 24, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: April 26, 1988.

[FR Doc. 88-9794 Filed 5-2-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(a)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereafter, for unlisted trading privileges in the following securities:

Dannaher Corporation

Common Stock, \$0.01 Par Value (File No. 7-3272)

Federal Signal Corporation

Common Stock, \$1.00 Par Value (File No. 7-3273)

KDI Corporation

Common Stock, \$0.35 Par Value (File No. 7-3274)

News Corporation Limited

American Depositary Shares (File No. 7-3275)

RTE Corporation

Common Stock, \$1.00 Par Value (File No. 7-3277)

Russell Corporation

Common Stock, \$0.01 Par Value (File No. 7-3277)

Scudder New Asia Fund, Inc.

Common Stock, \$0.01 Par Value (File No. 7-3278)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 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, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the

extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9707 Filed 5-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16383; 812-6843]

Application; Transohio Funding, Inc.

April 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Transohio Funding, Inc.

RELEVANT 1940 ACT SECTION:

Exemption requested under section 6(c).

SUMMARY OF APPLICATION:

Applicant seeks a conditional order exempting it and certain trusts to be created by it from all provisions of the 1940 Act in connection with the issuance and sale of mortgage-backed bonds and Equity Certificates (as hereinafter defined).

FILING DATE: The application was filed on August 21, 1987, and amended on February 19, and April 5, 1988.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on May 20, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicant with the request, either personally, or by mail, and also sent it to the Secretary, SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1100 Superior Avenue, Suite 1300, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: Sherry Hutchins Perkins, Staff Attorney (202) 272-3032 or Brion Thompson, Special Counsel (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

³ In the PSE's April 19 Letter, it described member comments on the proposed fee at the March 24, 1988 special membership meeting. The PSE indicated that there was initial concern by the members regarding the proposed fee. Specifically, some members were concerned that the interim assessment would place a larger burden on their respective floor business. The Exchange stated, however, that most members recognized that until a complete analysis could be made, no type of interim assessment would satisfy all members. The Exchange also stated that most members agreed that the structure of the interim activity charge was best for the entire Exchange, even if it placed a temporary burden on some members. The PSE also indicated that the members recognized that funds were needed to cover operating expenses.

⁴ The Commission is particularly interested in receiving comments from PSE member firms on the competitive impact for Options members of the PSE's supplemental activity fee. See note 1, *supra*.

SUPPLEMENTARY INFORMATION:

Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Statement and Representations

1. Applicant, an Ohio corporation, is a wholly-owned, limited purpose finance subsidiary of Transohio Savings Bank, an Ohio-chartered savings and loan association. Applicant was organized to facilitate the establishment of one or more trusts ("Trust") for the purpose of issuing one or more series of collateralized mortgage obligations (the "Bonds") secured by mortgage related collateral, as described below. Except as incidental to the activities described below and more fully set forth in the application, Applicant will not trade or deal in securities or engage in any other activity.

2. Each Trust will be a common law business trust created under an agreement (the "Trust Agreement") between Applicant, as depositor, and an independent bank, trust company or other fiduciary acting as owner trustee (the "Owner Trustee"). Each Trust Agreement will contemplate that the Owner Trustee will enter into a management agreement with respect to each Trust with Transohio Saving Bank, or another financial institution, for the provision of certain management services in connection with the issuance of the Bonds.

3. The Bonds will be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 between the Trust and an independent trustee for the Bondholders (the "Indenture Trustee"). Each series of Bonds will be secured by (i) "fully modified pass-through" mortgage-backed certificates guaranteed as to timely payment of principal and interest by the Government National Mortgage Corporation ("GNMA Certificates"), (ii) mortgage pass-through securities guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA Certificates"), (iii) mortgage participation certificates guaranteed as to timely payment of interest and timely or ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (iv) stripped mortgage-backed securities issued by GNMA, FHLMC or FNMA.¹ or

(v) a combination of such certificates (collectively, "Mortgage Certificates").

4. Applicant also will sell certificates (the "Equity Certificates") representing some or all of the ownership interest in a Trust to one or more mortgage lenders, thrift associations, commercial and investment banks, savings and loans, pension funds, employee benefit plans, insurance companies, real estate investment trust or other institutions that customarily engage in the purchase of mortgages and mortgage-backed assets ("Eligible Institutions"). Each sale will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933 ("1933 Act"). The Equity Certificates also will be sold to certain non-institutional "accredited investors" as defined in Rule 501(a) of the 1933 Act ("Accredited Investors").

5. A Trust may elect to be treated as a "real estate mortgage conduit" ("REMIC") for federal income tax purposes. An election by a Trust to be treated as REMIC or not be a REMIC will have no effect on the level of expenses that would be incurred by such Trust. Administrative fees and expenses will be provided for by one of the methods or a combination of one or more of the methods outlined in the application.

Applicant's Legal Analysis

1. The relief requested is necessary and appropriate in the public interest because: The Applicant will promote the public interest by expanding the market for mortgage securities, thereby increasing the capacity of mortgage lenders to meet housing needs; Applicant is not the type of entity to which the provisions of the 1940 Act were intended to be applied; the safeguards afforded to Bondholders fully protect investors; and prospective purchasers of Equity Certificates will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number.

Conditions to Order

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bond Collateral

(1) Each series of Bonds will be registered under the 1933 Act, unless

series pass-through rate) on the underlying pool or mortgage loans. The guarantee of payment in full in accordance with the terms of any stripped mortgage securities that secure the Bonds will be substantively identical to the guarantee by GNMA, FHLMC and FNMA Certificates (as the case may be).

offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The Mortgage Collateral directly securing the Bonds will be limited to Mortgage Certificates guaranteed by GNMA, FNMA, and FHLMC.

(3) If new Mortgage Certificates are substituted, the substitute certificates must: (1) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in conditions A (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as security for a series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds ("Bond Collateral"), will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of Applicant. The Indenture Trustee will be provided a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with Applicant. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) So long as applicable law requires and no less often than annually, an independent public accountant will audit the books and records of each Trust and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Certificates, together with reinvestment income at the assumed reinvestment rate, will be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion copies of the auditor's reports(s) will be provided to the Indenture Trustee.

¹ Stripped mortgage-backed securities are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions (adjusted to the

B. Conditions Relating to Floating Rate Bonds

(1) No Bond Collateral will be added to, and no Bond Collateral (other than periodic distributions of cash from, the collection account) will be withdrawn from, the collateral initially pledged to secure a series of Bonds (except pursuant to the limited right of substitution described in condition A(3) above. Specifically, reduction of interest payments due on a series of Bonds that contains a class or classes of Floating Rate Bonds will not result in the removal of any the Bond Collateral (except as foresaid) supporting the lien on the Indenture before the Bonds are paid.

(2) The Bond Collateral initially pledged to secure a series of Bonds, including a series of Bonds that contains a class or classes of Floating Rate Bonds, will be sufficient to pay the maximum amount of interest and principal due on such Bonds for the life of such Bonds. To ensure this, any series of Bonds that contains a class or classes of Floating Rate Bonds will be structured with reference to the interest rate cap for that particular series.²

C. Conditions Relating to the Sale of Equity Certificates

(1) The owners of the Equity Certificates will agree to be bound by the terms of the applicable Trust Agreement.

(2) Equity Certificates will be offered and sold only to (i) one or more Eligible Institutions (ii) or Accredited Investors (both, as defined above). Eligible Institutions will have such knowledge and experience on financial and business matters as to be capable of evaluating risks volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests therein. Accredited Investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risk of purchasing Equity Certificates and will

have direct, personal and significant experience in making investments in mortgage related securities and because of such volatility of interest rate fluctuations as they affect the value of mortgage related securities and residual interests therein.

(3) Each sale of Equity Certificates to an Eligible Institution and/or Accredited Investor will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the 1933 Act.

(4) Initially, Applicant intends to sell the Equity Certificates of each Trust to no more than a total of twenty-five Eligible Institutions and/or Accredited Investors. The Trust Agreement relating to each Trust will prohibit the transfer of Equity Certificates if there would be more than 100 beneficial owners of such Equity Certificates.

(5) The Trust Agreement will require that each purchaser of an Equity Certificate represent that it is purchasing the Equity Certificate for investment purposes only and that it will hold the Equity Certificate in its own name and not as nominee for undisclosed investors.

(6) The documents evidencing each sale of an Equity Certificate will provide that no owner of such Equity Certificate may be affiliated with the Indenture Trustee and no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in the Trust will be affiliated with either the custodian of the Bond Collateral or the nationally recognized statistical rating agency rating the Bonds. The Owner Trustee will not purchase any Equity Certificates but will function as a legal stockholder for the assets of the Trust.

D. Condition Relating to REMICs

The election by any Trust to be treated as a REMIC will have no effect on the level of expenses that will be incurred by such Trust. Any Trust, that elects to be treated as a REMIC will provide that all fees and expenses incurred in connection with the administration of the Trust will be paid or provide for in a manner satisfactory to the agencies that rate the Bonds as set forth in the application. Each Trust will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathon G. Katz,
Secretary.

[FR Doc. 88-9710 Filed 5-2-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION**National Advisory Council; Open Meeting; District of Columbia**

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC, will hold its semiannual National Advisory Council meeting beginning at 8:30 a.m. Monday, May 9, 1988, through 2:30 p.m., Tuesday, May 10, 1988, at the Washington Plaza Hotel, Massachusetts and Vermont Avenues NW., Washington, DC 20005, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, 1441 L Street NW., Room 503-E, Washington, DC 20416, (202) 653-6892.

Jean M. Nowak,
Director, Office of Advisory Councils.
April 27, 1988.

[FR Doc. 88-9788 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting; Michigan

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Detroit, Michigan, will hold a public meeting at 3:00 p.m. on Tuesday, May 17, 1988 at the Radisson Hotel, in Lansing, Michigan, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Richard Temkin, Deputy District Director, U.S. Small Business Administration, 515 Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226-2573, telephone 313-226-7240.

Jean M. Nowak,
Director, Office of Advisory Councils.
April 27, 1988.

[FR Doc. 88-9789 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting; North Carolina

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a public meeting at 10:30 a.m. on Tuesday, May 24, 1988, at the Charlotte Chamber

² In addition to those mechanisms referred to in the application, Applicant may utilize additional mechanisms to ensure the adequacy of the Bond Collateral notwithstanding the issuance of Floating Rate Bonds. Applicant will give the Staff of the Division of Investment Management ("Staff") notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of condition B(2) and will be adequate to meet the standards required for a rating of the Floating Rate Bonds in one of the two highest bond rating categories, and no Floating Rate Bonds will be issued for which this is not the case.

of Commerce, 129 West Trade Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, Suite 300, Charlotte, North Carolina 28202, telephone (704) 371-6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1988.

[FR Doc. 88-9790 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; Rhode Island

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting on Monday, May 16, 1988 at 11:00 a.m., at Metacomet Country Club, Veterans Memorial Parkway, East Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call James Hague, District Director, U.S. Small Business Administration, 380 Westminster Mall, Providence, Rhode Island 02903, (401) 528-4580.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1988.

[FR Doc. 88-9791 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; Vermont

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 4:30 p.m. on Wednesday, May 18, 1988 at the Radisson Hotel, Burlington, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605,

Montpelier, Vermont, 05602 (802) 828-4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 25, 1988.

[FR Doc. 88-9792 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting; Washington

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m., on Thursday, May 19, 1988, in Room 485, U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert D. Wiebe, Acting District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, P.O. Box 2167, Spokane, Washington 99210, telephone (509) 456-3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1988.

[FR Doc. 88-9793 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

New York Metropolitan Transportation Authority Bridge Tolls; Order of the Administrator on Petition To Remove Toll Restrictions on Brooklyn/Staten Island Bridges

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of bridge toll order.

SUMMARY: This notice sets forth the determination of the Federal Highway Administrator that the limitation imposed by section 324 of Pub. L. 99-190 upon tolls collected for motor vehicles on any bridge connecting the borough of Brooklyn, New York, and Staten Island, New York, shall cease to be in effect.

FOR FURTHER INFORMATION CONTACT: Steiner Silence, Special Procedures Branch, (202) 366-0334, or Julie White, Office of the Chief Counsel, (202) 366-0780. The address is the Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15

p.m., ET, Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION: Section 324(a) of the Department of Transportation and Related Agencies Appropriations Act of 1986 (Act) (Pub. L. 99-190, 99 Stat. 1288) (1985) provides that tolls collected for motor vehicles on any bridge connecting the borough of Brooklyn, New York, and Staten Island, New York, shall only be collected for those vehicles exiting from such bridge in Staten Island. Section 324(b) provides for enforcement of this limitation by withholding certain Federal-aid highway funds if tolls are collected for vehicles exiting from such bridge in the borough of Brooklyn. Section 324(d) of the Act provides that the limitation on tolls shall cease to be in effect if, upon petition by the Governor of New York, the Secretary determines that:

(A) A substantial loss of revenues has resulted from the limitation imposed by subsection (a), or

(B) Such limitation has resulted in significant traffic problems.

On December 7, 1987, the Secretary's authority under section 324 of the Act was delegated to the Federal Highway Administrator. (52 FR 46364, Dec. 7, 1987)

On March 3, 1988, the Governor of New York petitioned the Secretary to determine that the one-way toll limitation has resulted in a substantial loss of revenues and in significant traffic problems. In his petition, the Governor states that the Metropolitan Transportation Authority (MTA) spent over 20 months studying the effects of the one-way toll. The Governor states that on the basis of that review, the MTA determined that the revenue loss for 1986 was \$7 million and that there will be a similar revenue loss for 1987. In addition, the Governor states, the MTA determined that the one-way toll for all vehicles produced increased travel times on westbound movements on major routes in lower Manhattan and increased waiting times for eastbound traffic on the Gowanus Expressway in Brooklyn. In support of his petition, the Governor submitted a letter and resolution from the MTA recommending removal of the one-way toll and an environmental impact statement supporting that recommendation.

Upon consideration of the petition of the Governor of New York with the supporting documents, it is hereby determined that a substantial loss of revenues has resulted from the limitation imposed by section 324(a) of the Act. The petition demonstrates that the revenue loss for 1986 is estimated at \$7 million and that a continued loss at

that level is anticipated. Such a revenue loss is sufficiently substantial to justify cessation of the toll limitation imposed by section 324(a).

It is further determined that the limitation imposed by section 324 has resulted in significant traffic problems. The Environmental Impact Statement submitted in support of the petition demonstrates that travel times on westbound movements on major routes in the lower Manhattan Canal Street corridor have increased. Waiting times for eastbound traffic on the roadway from the Verrazano-Narrows Bridge to the Gowanus Expressway in Brooklyn have also increased.

Therefore, pursuant to the authority vested in the Federal Highway Administrator as delegated by the Secretary of Transportation by section 324(d) of the Act: It is ordered, That the limitation on tolls provided in section 324 of Pub. L. 99-190 shall cease to be in effect.

Issued on April 28, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88-9770 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-22-M

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: the FHWA announces that the National Motor Carrier Advisory will hold a meeting on May 17 and 18, 1988, in Washington, DC, at the U.S. Department of Transportation Headquarters, 400 7th Street SW., Washington, DC. The meeting will begin at 9:00 a.m. on both days. The meeting will be in room 4200 and it is open to the public.

The agenda will include: A complete review of various motor carrier regulations, the Commercial Drivers' Licensing program, the status of the "reasonable access" issue, progress being made in the review of the future of the highway program, and the status of various legislative proposals affecting the motor carrier industry.

In conjunction with the full Committee meeting, the Subcommittee on Operations will meet on May 16, 1988, to discuss the problems associated with transporting overweight containers. Particular attention will be given to the defining the extent of the problem, initiatives which are currently being taken to correct the problem, and additional efforts which need to take place. The Subcommittee meeting will begin at 9:30 a.m. in room 4200 of the U.S. Department of Transportation Headquarters, 400 7th Street SW., Washington, DC. This Subcommittee meeting is also open to the public.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 7th Street SW., Washington, DC 20590, (202) 366-2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on April 26, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88-9771 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT:

Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

Transit property	Grant number	Grant amount	Date obligated
Section 3 grants:			
Peninsula Transportation District Commission (PTDC), Newport News—Hampton, VA	VA-03-0034	\$1,373,625	Mar. 11, 1988.
Commuter Rail Division—Regional Transportation Authority (Metra), Chicago, IL	IL-03-0133	7,140,000	Mar. 21, 1988.
Southeastern Pennsylvania Transportation Authority (SEPTA), Philadelphia, PA	PA-03-0193	7,500,000	Mar. 25, 1988.
Southeastern Pennsylvania Transportation Authority (SEPTA), Philadelphia, PA	PA-03-0130-01	6,375,000	Mar. 31, 1988.
Section 9 grants:			
Alabama Highway Department, Dothan, AL	AL-90-X030	143,850	Mar. 29, 1988.
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X027-01	12,300	Do.
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL-90-X031	2,788,320	Mar. 31, 1988
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X032	593,292	Mar. 29, 1988
Metroplan, Little Rock, AR	AR-90-X013	300,000	Mar. 31, 1988
City of Pine Bluff, Pine Bluff, AR	AR-90-X011-01	2,479	Do.
City of Tucson, Tucson, AZ	AZ-90-X018	788,888	Do.
City of Tucson, Tucson, AZ	AZ-90-X017	6,183,150	Do.
Sacramento Regional Transit District, Sacramento, CA	CA-90-X275	3,492,281	April 5, 1988
Central Contra Costa Transit Agency, San Francisco, CA	CA-90-X276	3,308,194	Do.
San Mateo County Transit District, San Francisco, CA	CA-90-X280	16,818,828	Mar. 31, 1988
Golden Gate Bridge, Highway and Transportation District, San Francisco, CA	CA-90-X281	6,781,736	April 5, 1988

Transit property	Grant number	Grant amount	Date obligated
San Francisco PUC Municipal Railway, San Francisco, CA	CA-90-X282	25,268,100	Mar. 31, 1988
Long Beach Public Transportation Co., Long Beach, CA	CA-90-X278	4,512,000	Do.
City of Santa Rosa, Santa Rosa, CA	CA-90-X272	552,900	Do.
Corona Transit, Corona, CA	CA-90-X274	90,000	Do.
Riverside Transit Agency, Riverside, CA	CA-90-X277	1,434,757	April 5, 1988
Sonoma County Transit, Santa Rosa, CA	CA-90-X268	531,224	Mar. 31, 1988
Monterey-Salinas Transit, Seaside-Monterey, CA	CA-90-X267	3,067,423	Do.
Metropolitan Transit Development Board, San Diego, CA	CA-90-X266	10,847,120	Do.
Santa Barbara Metropolitan Transit District, Santa Barbara, CA	CA-90-X260	1,004,849	Do.
Metropolitan Transit Development Board, San Diego, CA	CA-90-X110-02	2,283,200	Do.
Fresno Transit, Fresno, CA	CA-90-X273	3,876,520	Do.
City of Torrance, Torrance, CA	CA-90-X271	680,000	Do.
Omnitrans, San Bernardino, CA	CA-90-X259	4,776,837	Do.
Santa Barbara Metropolitan Transit District, Santa Barbara, CA	CA-90-X157-01	153,075	Do.
City of Commerce, Commerce, CA	CA-90-X270	544,000	Do.
Orange County Transit District, Orange, CA	CA-90-X269	17,195,942	Do.
Santa Clara County Transit District, San Jose, CA	CA-90-X284	9,291,788	Do.
Southern California Rapid Transit District, Los Angeles, CA	CA-90-X283	49,620,442	Do.
City of Visalia, Visalia, CA	CA-90-X287	356,600	Do.
California Department of Transportation, San Francisco, CA	CA-90-X285	6,960,841	Do.
Golden Empire Transit District, Bakersfield, CA	CA-90-X288	1,119,620	Do.
City of Vallejo, Vallejo, CA	CA-90-X286	3,463,948	April 5, 1988
Riverside Transit Agency, Hemet, CA	CA-90-X290	399,018	Mar. 31, 1988
City of Fort Collins, Fort Collins, CO	CO-90-X039	837,532	Do.
City of Greeley, Greeley, CO	CO-90-X041	628,206	Do.
Housatonic Area Regional Transit, Housatonic, CT	CT-90-X110	1,352,000	Do.
Greater Bridgeport Transit District, Bridgeport, CT	CT-90-X109	542,424	Do.
City of Bridgeport, Bridgeport, CT	CT-90-X018-01	152,000	Do.
Greater New Haven Transit District, New Haven, CT	CT-90-X111	904,400	Do.
Washington Metropolitan Area Transit Authority, Washington, DC	DC-90-X010	16,318,124	Do.
Jacksonville Transit Authority, Jacksonville, FL	FL-90-X041	161,392	Do.
Broward County Transit, Ft. Lauderdale, FL	FL-90-X104	6,933,216	Mar. 29, 1988
Metropolitan Dade County, Miami, FL	FL-90-X101-01	909,600	Mar. 30, 1988
City of Tallahassee, Tallahassee, FL	FL-90-X105	1,121,089	Mar. 29, 1988
Hillsborough Area Regional Transit, Tampa, FL	FL-90-X106	1,970,219	Do.
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-90-X040	20,788,187	Do.
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-90-X035-02	1,200,000	Do.
City of Coralville, Iowa City, IA	IA-90-X084	53,514	Mar. 31, 1988
Metropolitan Transit Authority of Black Hawk County, Waterloo, IA	IA-90-X080-01	72,430	Do.
Keyline Transit System, Dubuque, IA	IA-90-X086	40,000	Do.
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-90-X075-02	2,061,943	Do.
University of Iowa Campus, Iowa City, IA	IA-90-X083	72,973	Do.
Iowa City Transit, Iowa City, IA	IA-90-X085	187,376	Do.
City of Boise—Boise Urban Stages, Boise, ID	ID-90-X013-03	204,339	Do.
Regional Transportation Authority, Chicago, IL	IL-90-X115	48,848,493	Do.
City of Kankakee, Kankakee, IL	IL-90-X106	16,075	Do.
Rockford Mass Transit District, Rockford, IL	IL-90-X107	958,140	Do.
Goshen Transit, Goshen, IN	IN-90-X103	18,300	Do.
Terre Haute Transit Utility, Terre Haute, IN	IN-90-X104	408,903	Do.
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X028	1,666,607	Do.
Transit Authority of Lexington-Fayette Urban County Govt, Lexington, KY	KY-90-X027-02	180,000	Do.
City of Lafayette, Lafayette, LA	LA-90-X062-01	6,330	Do.
City of Baton Rouge/Parish of East Baton Rouge, Baton Rouge, LA	LA-90-X075	61,600	Do.
City of Shreveport, Shreveport, LA	LA-90-X078	1,285,136	Do.
City of Baton Rouge/Parish of East Baton Rouge, Baton Rouge, LA	LA-90-X076	1,288,000	Do.
Massachusetts Bay Transportation Authority, Boston, MA	MA-90-X073-01	32,169,809	Do.
Merrimack Valley Regional Transit Authority, Lawrence-Haverhill, MA	MA-90-X040-04	323,168	Do.
Pioneer Valley Regional Transit Authority, Springfield, MA	MA-90-X079	2,068,611	April 13, 1988
Southeastern Regional Transit Authority, New Bedford, MA	MA-90-X078	2,765,253	Mar. 31, 1988
Maine Department of Transportation, Bangor, ME	ME-90-X026-01	157,500	Do.
Maine Department of Transportation, Portland, ME	ME-90-X034	10,000	Do.
Lewiston-Auburn Transit Committee, Lewiston-Auburn, ME	ME-90-X035	11,467	Do.
Capital Area Transportation Authority, Lansing, MI	MI-90-X094	1,500,455	Do.
Battle Creek Transit, Battle Creek, MI	MI-90-X093	717,137	Do.
Jackson Transportation Authority, Jackson, MI	MI-90-X096	183,040	Do.
Southeastern Michigan Transportation Authority, Detroit, MI	MI-90-X092	57,808	Do.
Metro Transit System, Kalamazoo, MI	MI-90-X095	1,074,366	Do.
Twin Cities Area Transportation Authority, Benton Harbor, MI	MI-90-X091	551,349	Do.
Southeastern Michigan Transportation Authority, Detroit, MI	MI-90-X088	22,444,010	Do.
City of East Grand Forks, East Grand Forks, MN	MN-90-X029	60,840	Do.
Duluth Transit Authority, Duluth, MN	MN-90-X032	496,200	Do.
Metropolitan Transit Commission, Minneapolis-St. Paul, MN	MN-90-X031	15,316,427	Do.
St. Cloud Metropolitan Transit Commission, St. Cloud, MN	MN-90-X033	400,069	Do.
Gulf Regional Planning Commission, Gulfport, MS	MS-90-X020	98,000	Mar. 29, 1988
Central Mississippi Planning and Development District, Jackson, MS	MS-90-X021	66,080	Do.
Fayetteville Area Transit System, Fayetteville, NC	NC-90-X073	63,988	Mar. 31, 1988
Town of Chapel Hill Chapel Hill Transit, Chapel Hill, NC	NC-90-X072	542,400	Do.
City of Grand Forks, Grand Forks, ND	ND-90-X017	444,233	Do.
Lincoln Transit System, Lincoln, NE	NE-90-X017	1,184,431	Do.
Metro Area Transit, Omaha, NE	NE-90-X016	4,805,797	Do.
City of Nashua, Nashua, NH	NH-90-X014-01	20,000	Do.

Transit property	Grant number	Grant amount	Date obligated
City of Nashua, Nashua, NH.....	NH-90-X008-03	9,130	Do.
Delaware River Port Authority/Port Authority Transit Corp., Camden, NJ.....	NJ-90-X025	2,674,016	Mar. 16, 1988
City of Las Cruces, Las Cruces, NM.....	NM-90-X015-01	212,980	Mar. 31, 1988
Rochester Genesee Regional Transportation Authority, Rochester, NY.....	NY-90-X131	3,938,042	Do.
County of Chemung, Chemung, NY.....	NY-90-X132	787,632	Do.
Utica Transit Authority, Utica, NY.....	NY-90-X133	525,000	Do.
Metropolitan Transportation Authority, New York, NY.....	NY-90-X135	290,469,857	Do.
City of Glens Falls, Glens Falls, NY.....	NY-90-X134	200,320	Do.
Toledo Area Transit Authority, Toledo, OH.....	OH-90-X093	2,470,952	Do.
Western Reserve Transit Authority, Youngstown, OH.....	OH-90-X100	2,381,441	Do.
Central Ohio Transit Authority, Columbus, OH.....	OH-90-X098	5,397,600	Do.
Greater Cleveland Regional Transit Authority, Cleveland, OH.....	OH-90-X097	9,450,629	Do.
Miami Valley Regional Transit Authority, Dayton, OH.....	OH-90-X075-01	640,000	Do.
Canton Regional Transit Authority, Canton, OH.....	OH-90-X101	1,162,425	Do.
Portage Area Regional Transit Authority, Kent, OH.....	OH-90-X085	1,600,000	Do.
Rogue Valley Transportation District, Medford, OR.....	OR-90-X025	500,174	Do.
Westmoreland County Transit Authority, Greensburg, PA.....	PA-90-X139	188,883	Mar. 29, 1988
Cambria County Transit Authority, Johnstown, PA.....	PA-90-X140	628,734	Apr. 6, 1988
Cambria County Transit Authority, Johnstown, PA.....	PA-90-X117-01	66,845	Mar. 31, 1988
Municipality of Arecibo, Arecibo, PR.....	PR-90-X036	3,610,992	Mar. 29, 1988
Municipality of Toa Baja, Toa Baja, PR.....	PR-90-X035	10,000	Do.
Metropolitan Bus Authority, San Juan, PR.....	PR-90-X034	8,594,477	Do.
Pee Dee Regional Transportation Authority, Florence, SC.....	SC-90-X018-01	50,000	Do.
City of Rapid City, Rapid City, SD.....	SD-90-X011	206,412	Mar. 31, 1988
Bristol Tennessee Transit, Bristol, TN.....	TN-90-X061	76,700	Mar. 29, 1988
Dallas Area Rapid Transit, Dallas, TX.....	TX-90-X103	13,367,000	Mar. 31, 1988
City of El Paso, El Paso, TX.....	TX-90-X118	2,848,977	Do.
City of Mesquite, Mesquite, TX.....	TX-90-X110	10,000	Do.
City of Sherman, Sherman, TX.....	TX-90-X120	56,270	Do.
City of Arlington, Arlington, TX.....	TX-90-X114	85,500	Do.
Utah Transit Authority, Salt Lake City, UT.....	UT-90-X010	6,285,860	Do.
Tidewater Transportation District Commission, Norfolk, VA.....	VA-90-X007-04	792,000	Do.
Green Bay Transit, Green Bay, WI.....	WI-90-X085	1,364,647	Do.
Duluth Transit Authority, Superior, WI.....	WI-90-X087	133,182	Do.
Jamesville Transit System, Jamesville, WI.....	WI-90-X086	336,604	Do.
Milwaukee County Transit System, Milwaukee WI.....	WI-90-X081-01	408,000	Do.
Oshkosh Transit System, Oshkosh, WI.....	WI-90-X088	1,188,638	Do.
Valley Transit, Appleton, WI.....	WI-90-X084	1,302,565	Do.

Transit property	Grant number	Grant amount
Section 9 grants ready for obligation waiting for 13(c) certification:		
City of Modesto, Modesto, CA.....	CA-90-X265	\$1,615,186
Alameda Contra Costa Transit, Oakland, CA.....	CA-90-X279	13,924,773
Regional Transportation District, Denver, CO.....	CO-90-X040	10,683,200
City of Boise, Boise, ID.....	ID-90-X105	685,377
Rock Island Co. Metropolitan Mass Transit District, Rock Island, IL.....	IL-90-X114	624,565
Bloomington Transit, Bloomington, IN.....	IN-90-X105	690,000
Pioneer Valley Regional Transit Authority, Springfield, MA.....	MA-90-X079-01	2,126,410
Merrimack Valley Regional Transit Authority, Bradford, MA.....	MA-90-X080	1,843,137
Brockton Area Transit Authority, Brockton, MA.....	MA-90-X081	1,310,987
Mid-America Regional Council, Kansas City, MO.....	MO-90-X046	160,000
Bi-State Development Agency, St Louis, MO.....	MO-90-X047	25,995,700
City of Fargo, Fargo, ND.....	ND-90-X016	596,174
New Jersey Transit Corporation, Statewide, NJ.....	NJ-90-X023-01	60,512,908
Metro Regional Transit Authority, Akron, OH.....	OH-90-X099	2,432,000
Clark County Public Transportation Benefit Area, Vancouver, WA.....	WA-90-X081	1,952,637

Issued on April 25, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88-9798 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-57-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of

selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Korean Economic and Business Writes Program

The Office of Private Sector Programs, Initiative Grants and Bilateral Accords Division of the United States Information Agency (USIA) will assist in supporting a 20-to-21 day issues-oriented program for 10 economic and business affairs writers (and/or journalists) from the Republic of Korea. This program is scheduled for July or

August, 1988 and will focus on U.S.-Korean trade relations and Korean perceptions of the United States. USIA would prefer that the project take place in the Mid-west, one other location, and in Washington, DC. Participants will be selected by USIA representatives in Seoul. Program topics through meetings and short seminars may include: A comparison of journalism in both countries; and overview of U.S.-Korean economic relations; corporate communication with the media; the impact of new technologies on economic development; financial news coverage on television and in the business press; and reporting on economic and business issues directly affecting U.S.-Korean relations. Senior level meetings with corporate leaders, Members of Congress, and U.S. Government officials are also envisioned. A U.S. not-for-profit institution with knowledge of U.S.-Korean journalistic practices and economic issues will design and execute this project.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project

and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest:

Office of Private Sector Programs,
Bureau of Educational and Cultural
Affairs (Attn: Initiatives—Korean
Writers), United States Information
Agency, 301 4th Street SW.,
Washington, DC 20547.

Robert Francis Smith,

Director, Officer of Private Sector Programs.

Dated: April 21, 1981. *

[FR Doc. 88-9743 Filed 5-2-88; 8:45 am]

BILLING CODE 8230-01-M

Advisory Board for Radio Broadcasting to Cuba; Meeting

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on May 17, 1988, in Room 3557, 400 Sixth Street SW., Washington, DC. Below is the intended agenda.
Tuesday, May 17, 1988

Part One—Closed to the Public

- 10:00 a.m. 1. Report by the Director of Radio Marti
- 11:00 a.m. 2. Status of selection of executive director
- 11:30 a.m. 3. Marti TV
- 1:30 p.m. 4. Ethics briefing by USIA attorney

Part Two—Open to the Public

- 2:00 p.m. 5. Radio Marti evaluation report
- 2:30 p.m. 6. Contracting out of annual report
- 3:00 p.m. 7. Public testimony period.

Items one through four, which will be discussed from 10:00 a.m. to 2:00 p.m., will be closed to the public. Items 1 and 3 involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Items 2 and 4 relate solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact Kathy Litwak (202) 485-7011 to make prior arrangements, as access to the building is controlled.

Dated: April 27, 1988.

Charles Z. Wick,
Director.

[FR Doc. 88-9733 Filed 5-2-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 85

Tuesday, May 3, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, May 26, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Enforcement Objectives
2. Enforcement Matters
3. Financial rule enforcement review

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9828 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 26, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Fourth Quarter FY 1988 Objectives.

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9829 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, May 11, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9830 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 11, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Application of the Chicago Board of Trade for designation as a contract market in CBOE 50 Stock Index futures
2. Application of the Chicago Board of Trade for designation as a contract market in CBOE 250 Stock Index futures
3. Application of the Chicago Board of Trade for designation as a contract market in Medium-Term U.S. Treasury Note Options

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9831 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 am (Eastern Time) Tuesday, May 10, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634-6748.

Dated: April 28, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88-9815 Filed 4-29-88; 11:23 am]

BILLING CODE 6750-06-M

FEDERAL RESERVE SYSTEM: BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, May 9, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9880 Filed 4-29-88; 3:31 pm]

BILLING CODE 6210-01-M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE:

May 9, 1988

6:00-9:00 p.m.

May 10, 1988

9:00 a.m.-12:00 noon.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

May 9, 1988

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of February 1-2, 1988

May 10, 1988

4. Report of the Committees of the Board
5. Other Business

CONTACT PERSONS FOR MORE

INFORMATION: Charles M. Berk,

Secretary to the Board of Directors. (703) 841-3812.

Dated: April 29, 1988.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 88-9862 Filed 4-29-88; 1:34 am]

BILLING CODE 7025-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, May 10, 1988.

PLACE: Conference Rooms 8A, B&C, Eighth Floor, 800 Independence Avenue SW., Washington, DC. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Northwest Airlines, Inc., McDonnell Douglas DC-9-82, Detroit Metropolitan Wayne County International Airport, Romulus, Michigan, August 16, 1987.

2. Recommendation to FAA re Fuel System Malfunctions Causing Engine Flameouts on Bell 206L Helicopters.

FOR MORE INFORMATION CONTACT: Bea Hardesty. (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

April 29, 1988.

[FR Doc. 88-9881 Filed 4-29-88; 3:32 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 2, 9, 16, and 23, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 2

Wednesday, May 4

10:00 a.m.

Annual Briefing on the State of the Nuclear Industry (Public Meeting).

2:00 p.m.

Briefing on NRC Point Papers for Consultation Draft of the Site Characterization Plan for Yucca Mountain (Public Meeting).

Thursday, May 5

10:00 a.m.

Briefing on Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM). (Public Meeting).

2:00 p.m.

Briefing on Status of Operator Requalification Program (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 9—Tentative

Thursday, May 12

10:00 a.m.

Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting).

2:00 p.m.

Briefing on Efforts to License a HLW Repository and Status of Center for Nuclear Waste Repository Analysis (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 16—Tentative

Tuesday, May 17

2:00 p.m.

Briefing by DOE on High Level Waste Program. (Public Meeting).

Wednesday, May 18

10:00 a.m.

Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting).

2:00 p.m.

Annual Briefing by INPO (Public Meeting).

Thursday, May 19

2:00 p.m.

Briefing on NAS Human Factor Recommendations (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 23—Tentative

Thursday, May 26

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS

CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE

INFORMATION: William Hill, (301) 492-1661.

Dated: April 28, 1988.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 88-9841 Filed 4-29-88; 1:33 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 13378 April 22, 1988).

STATUS: Open/close meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, April 19, 1988.

CHANGES IN THE MEETING: Additional item/meeting.

The following additional item was considered an open meeting on Wednesday, April 27, 1988, at 10:30 a.m.

Consideration of recommendations of the National Commission on Fraudulent Financial Reporting ("Treadway Commission"). For further information, please contact Anne Chafer at (202) 272-2422.

The following items were considered at a closed meeting on Wednesday, April 27, 1988, following the 10:30 a.m. open meeting:

Regulatory matter regarding financial institutions.

Formal orders of investigation.

Commissioner Peters, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272-2014.

Jonathan G. Katz,

Secretary.

April 23, 1988.

[FR Doc. 88-9827 Filed 4-29-88; 12:14 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 53, No. 85

Tuesday, May 3, 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 ENERGY

Economic Regulatory Administration

Final Consent Order With Phillips Petroleum Co.

Correction

In notice document 88-7244 beginning on page 10928 in the issue of Monday, April 4, 1988, make the following corrections:

1. On page 10929, in the first column, in the second complete paragraph, in the

eighth line, "property" should read "propriety".

2. On the same page, in the second column, in the first complete paragraph, in the 13th line, "\$15 million" should read "\$51 million".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-08-4212-12; CA-21579]

California Desert District and Ukiah District, Realty Action; Exchange of Public and State Lands in Imperial, Inyo, Mendocino, Riverside, San Bernardino and Trinity Counties, CA

Correction

In notice document 88-8119 beginning on page 12474 in the issue of Thursday, April 14, 1988, make the following corrections:

1. On page 12474, in the second column, under San Bernardino Meridian,

California, in the second line from the bottom "N¼" should read "NE¼".

2. On the same page, in the third column, the 15th line should read "Sec. 26: NW¼NE¼NE¼, N½SW¼N E¼NE¼".

3. On the same page, in the same column, in the 23rd line, "45,362.60" should read "4,362.60".

4. On page 12475, in the first column, the 21st line should read "T.15½N., R.14E.,".

5. On the same page, in the same column, the 27th line should read "T.17N., R.12½E.,".

6. On the same page, in the same column, in the 44th line, "Sec. 26" should read "Sec. 36".

7. On the same page, in the same column, in paragraph number 1, in the last line "formerly" was misspelled.

8. On page 12476, in the first column, the signature should read "H.W. Riecken."

BILLING CODE 1505-01-D

34
CFR
Parts
373
and
380

Tuesday
May 3, 1988

Part II

Department of Education

Office of Special Education and
Rehabilitative Services

34 CFR Parts 373 and 380

Programs of Special Projects and
Demonstrations for Providing Vocational
Rehabilitation Services to Individuals With
Severe Handicaps, and Supported
Employment Services to Individuals With
Severe Handicaps and Technical
Assistance Projects; Notice of Proposed
Rulemaking

DEPARTMENT OF EDUCATION**Office of Special Education and Rehabilitative Services****34 CFR Parts 373 and 380****Programs of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps, and Supported Employment Services to Individuals With Severe Handicaps and Technical Assistance Projects****AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations in Part 373 governing the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps and to add regulations in a new Part 380 to implement the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With Severe Handicaps and Technical Assistance Projects. These proposed regulations would (1) revise the regulations in Part 373 to authorize projects to meet the special needs of isolated populations of individuals who are handicapped, particularly American Indians residing either on or off reservations; (2) relocate existing regulations for Statewide supported employment demonstration projects from Part 373 to Part 380; (3) implement in Part 380 two newly authorized types of supported employment projects—community-based projects and technical assistance projects; and (4) make other technical amendments.

These proposed regulations would implement amendments to section 311 of the Rehabilitation Act made by Pub. L. 99-506, the Rehabilitation Act Amendments of 1986.

DATES: Comments must be received on or before July 5, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3322, 330 C Street SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, (202) 732-1349.

SUPPLEMENTARY INFORMATION: These proposed regulations would establish a new Part 380 that would contain regulations for three kinds of supported employment discretionary grant programs authorized under section 311 of the Rehabilitation Act: Statewide supported employment demonstration projects; community-based supported employment projects; and technical assistance projects.

The purpose of Statewide supported employment demonstration projects is to convert existing Statewide programs of rehabilitation for individuals with severe handicaps to programs that offer supported employment services. Grant funds are to be spent for the costs of program development and reorganization, staff training, and evaluation. While grant recipients must also provide, or ensure the provision of, direct services to individuals, grant funds cannot be used for this purpose.

By contrast, community-based supported employment projects serve a more localized geographical area and must develop innovative approaches to improve and expand the delivery of supported employment services. These projects are designed to enhance local service delivery capacity. Grant funds pay for direct services to individuals but only for a maximum period of 18 months.

Technical assistance projects provide assistance to State vocational rehabilitation agencies in implementing the State Supported Employment Services Program authorized under Title VI, C of the Rehabilitation Act.

Because the purposes of these three supported employment programs vary, the proposed regulations contain three different sets of selection criteria at §§ 380.11, 380.12, and 380.13. The proposed regulations also include information collection and reporting requirements that are mandated by statute.

Executive Order 12291

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are nonprofit organizations providing services to or conducting activities for individuals with handicaps. However,

the regulations would not have a significant economic impact on the organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 380.11, 380.12, 380.13, 380.20 and 380.21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3322, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects**34 CFR Part 373**

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 380

Education, Grants programs—education, Grants programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number: 84.128 Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps and Program of Special

Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects)

Dated: March 16, 1988.

William J. Bennett,
Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Part 373 and adding a new Part 380 as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

1. The authority citation for Part 373 is revised to read as follows:

Authority: Sections 12(c), 311(a)(1), and 311(a)(4) of the Act, as amended; 29 U.S.C. 711(c), 777a(a)(1) and 777a(a)(4), unless otherwise noted.

2. The title of Part 373 is revised to read as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS WITH SEVERE HANDICAPS

3. The heading for § 373.1 is revised to read as follows:

§ 373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps?

§§ 373.1, 373.10, 373.30 [Amended]

4. Remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

- (a) Section 373.1;
- (b) Section 373.10(b); and
- (c) Section 373.30(f)(2)(i), g(2)(i), and (h)(2).

5. Section 373.10 is amended by redesignating paragraph (b) as paragraph (c), removing the words "Handicapped individuals" in redesignated paragraph (c) and adding, in their place, the words "Individuals with handicaps", adding a new paragraph (b), and revising the authority citation to read as follows:

§ 373.10 What types of projects are authorized under this program?

(b) Projects also may be conducted to meet the special needs of isolated populations of individuals with handicaps, particularly among American

Indians residing on or outside of reservations.

(Authority: Sections 311(a)(1) and 311(a)(4) of the Act; 29 U.S.C. 777a(a)(1) and 777a(a)(4))

§ 373.10, 373.42 [Amended]

6. Remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

- (a) Section 373.10(a); and
- (b) Section 373.42(b).

§ 373.14 [Removed]

7. Section 373.14 is removed.
8. The first sentence of the introductory text in § 373.30 is revised to read as follows:

§ 373.30 What selection criteria does the Secretary use under this program?

The Secretary uses the criteria in this section to evaluate applications for all projects under this part. * * *

§ 373.31 [Removed]

9. Section 373.31 is removed.
10. A new Part 380 is added to read as follows:

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH SEVERE HANDICAPS AND TECHNICAL ASSISTANCE PROJECTS

Subpart A—General

Sec.

380.1 What is the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects?

380.2 Who is eligible for an award?

380.3 What types of projects are authorized?

380.4 What activities may the Secretary fund under Statewide Supported Employment demonstration projects?

380.5 What activities may the Secretary fund under Community-Based Supported Employment projects?

380.6 What activities may the Secretary fund under Technical Assistance Supported Employment projects?

380.7 What priorities may the Secretary establish?

380.8 What regulations apply?

380.9 What definitions apply?

Subpart B—How Does the Secretary Make an Award?

380.10 How does the Secretary evaluate an application?

380.11 What selection criteria does the Secretary use for Statewide Supported Employment demonstration projects?

380.12 What selection criteria does the Secretary use for Community-Based Supported Employment projects?

380.13 What selection criteria does the Secretary use for Technical Assistance Supported Employment projects?

380.14 What other factors does the Secretary consider in reviewing an application?

Subpart C—What Post-Award Conditions Must Be Met by a Grantee?

380.20 What are the information collection and reporting requirements for Statewide Supported Employment demonstration and Community-Based Supported Employment grantees?

380.21 What are the information collection and reporting requirements for Technical Assistance Supported Employment grantees?

Authority: 29 U.S.C. 711(c) and 777a(d), unless otherwise noted.

Subpart A—General

§ 380.1 What is the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects?

This program is designed to provide grants for special projects and demonstrations to expand or otherwise improve the provision of supported employment services to individuals with severe handicaps and for technical assistance projects.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d))

§ 380.2 Who is eligible for an award?

(a) Applications for Statewide demonstration projects under § 380.4 may be submitted by public and nonprofit rehabilitation facilities, designated State units, and other public and private agencies and organizations.

(b) Applications for community-based projects under § 380.5 may be submitted by public and nonprofit rehabilitation facilities, designated State units, and other public and private agencies and organizations.

(c) Applications for technical assistance projects under § 380.6 may be submitted by public agencies and nonprofit private organizations that have experience in training and provision of supported employment services.

(Authority: 29 U.S.C. 777a(d))

§ 380.3 What types of projects are authorized?

The following types of projects may be funded under this program:

(a) *Statewide demonstration projects* as described in § 380.4. The purpose of Statewide demonstration projects is to stimulate the development and provision of supported employment services on a statewide basis for individuals with severe handicaps.

(b) *Community-based projects* as described in § 380.5. The purposes of Community-based projects are to stimulate the development of innovative approaches for improving and expanding the provision of supported employment services to individuals with severe handicaps, and to enhance local capacity to provide supported employment services.

(c) *Technical assistance projects* as described in § 380.6. The purpose of technical assistance projects is to provide technical assistance to States in implementing the State Supported Employment Services Program under 34 CFR Part 363.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d)).

§ 380.4 What activities may the Secretary fund under Statewide Supported Employment demonstration projects?

(a) *Authorized activities.* The following activities are authorized under Statewide Supported Employment demonstration projects:

(1) Program development, including program start-up costs, for new or existing community organizations and employers.

(2) Staff training.

(3) Program evaluation.

(4) Program reorganization to convert existing programs to programs that offer supported employment services.

(b) *Restrictions on the use of funds.*

(1) Statewide Supported Employment demonstration project grants may not be used to provide supported employment services to individuals with severe handicaps.

(2) A grantee must provide, or ensure the provision of, those direct services needed by individuals with severe handicaps in order for them to obtain and maintain employment from funds other than those made available under this part. These supported employment services include—

(i) Job site training to prepare and enable individuals with severe handicaps to perform work and maintain the job;

(ii) On-going supervision of individuals with severe handicaps on the job;

(iii) On-going behavior management; and

(iv) Case management, including assistance to coordinate services from various sources.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d)).

§ 380.5 What activities may the Secretary fund under Community-Based Supported Employment projects?

(a) *Authorized activities.* The following activities are authorized under community-based projects:

(1) Job search assistance.

(2) Job development, including work site modification and use of advanced learning technology for skills training.

(3) On-the-job training.

(4) Job placement.

(5) Application of rehabilitation engineering in providing supported employment services.

(6) Provision of traditionally time-limited post-employment services for individuals placed in employment.

(7) Development of cooperative agreements with service providers for the provision of extended services.

(b) *Restrictions on the use of funds.* The Secretary does not provide financial assistance under Community-Based Supported Employment projects for the provision of extended supported employment services.

(Authority: 29 U.S.C. 777a(d)).

§ 380.6 What activities may the Secretary fund under Technical Assistance Supported Employment projects?

The following activities are authorized under technical assistance projects:

(a) Staff training.

(b) Development of and placement in jobs for individuals with severe handicaps.

(c) Development of cooperative agreements with service providers for extended services.

(d) Conversion of existing programs to programs that offer supported employment services.

(Authority: 29 U.S.C. 777a(d)(2)).

§ 380.7 What priorities may the Secretary establish?

In any fiscal year, the Secretary may establish priorities for one or more of the types of projects described in § 380.3 by publishing a notice in the *Federal Register*.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c)).

§ 380.8 What regulations apply?

The following regulations apply to the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74

(Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 380.

(c) The regulations in 34 CFR 369.47.

(Authority: 29 U.S.C. 711(c) and 777a(d)).

§ 380.9 What definitions apply?

(a) The following term used in this part is defined in 34 CFR Part 363:

Supported employment

(b) The following terms used in this part are defined in 34 CFR Part 369:

Designated State unit

Rehabilitation facility

Severely handicapped individual

(c) *Other definition.* The following definition also applies to this part:

"Traditionally time-limited post-employment services" means services that are needed to support and maintain an individual with severe handicaps in employment and are provided for a period not to exceed 18 months before transition is made to extended services.

(Authority: 29 U.S.C. 777a(d)).

Subpart B—How Does the Secretary Make an Award?

§ 380.10 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of selection criteria described in §§ 380.11, 380.12, or 380.13 of this part. The maximum possible score for each criterion is stated in parentheses following the criterion. The number of points awarded each criterion depends on how well the applicant meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Authority: 29 U.S.C. 777a(d)).

§ 380.11 What selection criteria does the Secretary use for Statewide Supported Employment demonstration projects.

(a) *Plan of operation.* (5 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project; and

(2) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraph (b)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Capacity to achieve lasting statewide change.* (15 points)

(1) The Secretary reviews each application to determine whether the applicant has the capacity to achieve lasting statewide change by converting existing programs that do not provide supported employment services to individuals with severe handicaps to programs that do provide these services.

(2) The Secretary determines the extent to which—

(i) The applicant has responsibility for programs to be changed or is able to assure that program change will occur;

(ii) The project resources will be used to change how existing service funds are spent, not to supplant those funds; and

(iii) A sufficient number of service programs and work opportunities can be developed within the project period to achieve statewide change.

(g) *Project design.* (20 points)

(1) The Secretary reviews each application to assess the quality of the project design and approach.

(2) The Secretary determines the extent to which—

(i) The applicant has clearly defined the services and service delivery system that will result from the project and has analyzed in detail how these differ from current services and the current service delivery systems;

(ii) All relevant barriers to implementing the proposed statewide change are identified and appropriate strategies are proposed for eliminating those barriers;

(iii) The project will employ a multifaceted and systematic approach to achieving project objectives through such means as dissemination of information, training and technical assistance, start-up of new programs, and development of incentives for employer participation; and

(iv) The project is designed to develop a range of service approaches that are appropriate for the variety of employment opportunities in the State.

(h) *Participation and coordination.* (15 points)

(1) The Secretary reviews each application to determine whether the proposed project provides for coordination with and participation of all affected groups and agencies.

(2) The Secretary determines the extent to which—

(i) Individuals with severe handicaps, their parents or other representatives, and potential employers are involved in project planning and decision-making; and

(ii) All State agencies whose cooperation and participation are necessary for statewide implementation of supported employment projects are actively collaborating in project management. These agencies may include those responsible for secondary special education, vocational rehabilitation, and day services for individuals with developmental disabilities, as well as private agencies and rehabilitation facilities.

(i) *Impact on other States.* (5 points)

(1) The Secretary reviews each application to assess the impact the proposed project will have on other States.

(2) The Secretary determines the extent to which—

(i) The proposed project design can be used by other States; and

(ii) The applicant will disseminate its project results to other States.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d))

§ 380.12 What selection criteria does the Secretary use for Community-Based Supported Employment projects?

(a) *Plan of operation.* (10 points) The Secretary reviews each application in

accordance with the criterion in § 380.11(a).

(b) *Quality of key personnel.* (10 points) The Secretary reviews each application in accordance with the criterion in § 380.11(b).

(c) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application in accordance with the criterion in § 380.11(c).

(d) *Evaluation plan.* (5 points) The Secretary reviews each application in accordance with the criterion in § 380.11(d).

(e) *Adequacy of resources.* (10 points) The Secretary reviews each application in accordance with the criterion in § 380.11(e).

(f) *Impact.* (25 points) The Secretary reviews each application to determine the extent to which the proposed project will enhance the capacity of local, community-based programs to provide supported employment services to individuals with severe handicaps, including—

(1) The contribution that the project findings or results will make to current knowledge or practice; and

(2) The extent to which findings and results will be disseminated to service providers in order to expand and improve the provision of supported employment services.

(g) *Innovativeness.* (30 points) (1) The Secretary reviews each application to assess whether the proposed project is likely to contribute to the development and use of innovative approaches for improving and expanding the provision of supported employment services to individuals with severe handicaps.

(2) The Secretary determines the extent to which the proposed project—

(i) Builds upon current model practices and research findings;

(ii) Uses unique strategies and approaches that can be incorporated into effective service delivery models; and

(iii) Demonstrates how the innovative strategies and approaches address important service delivery problems.

(Authority: 29 U.S.C. 777a(d))

§ 380.13 What selection criteria does the Secretary use for Technical Assistance Supported Employment projects?

(a) *Plan of operation.* (10 points) The Secretary reviews each application on the basis of the criterion in § 380.11(a).

(b) *Quality of key personnel.* (20 points) The Secretary reviews each application on the basis of the criterion in § 380.11(b).

(c) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each

application on the basis of the criterion in § 380.11(c).

(d) *Evaluation plan.* (10 points) The Secretary reviews each application on the basis of the criterion in § 380.11(d).

(e) *Adequacy of resources.* (5 points) The Secretary reviews each application on the basis of the criterion in § 380.11(e).

(f) *Evidence of need.* (20 points).

(1) The Secretary reviews each application to assess whether the need for the proposed technical assistance has been adequately justified.

(2) The Secretary determines the extent to which the application—

(i) Describes the technical assistance needs to be addressed by the project;

(ii) Describes how the applicant identified those needs;

(iii) Describes how those needs will be met by the project; and

(iv) Describes the benefits to be gained by meeting those needs.

(g) *Project design.* (20 points).

(1) The Secretary reviews each application to evaluate the quality of the proposed technical assistance project design.

(2) The Secretary determines the extent to which—

(i) The technical assistance objectives are designed to meet the identified needs and are clearly defined, measurable, and achievable;

(ii) The content of the proposed technical assistance and instructional approach are appropriate for the project participants.

(3) The Secretary determines the extent to which each application provides for—

(i) A method for gaining the participation of prospective target populations in need of technical assistance;

(ii) Innovative procedures for disseminating information and imparting skills to project participants; and

(iii) Use of current research findings and information on model practices in providing the technical assistance.

(h) *Participation.* (5 points).

(1) The Secretary reviews each application to determine whether the proposed project provides for participation by individuals with severe handicaps, parents or other representatives of individuals with severe handicaps, recipients of technical assistance, and other individuals and agencies affected by the project.

(2) The Secretary determines the extent to which—

(i) The project objectives and proposed activities to attain project objectives are related to the employment needs of individuals with severe handicaps; and

(ii) The applicant proposes to involve individuals with severe handicaps, potential employers, and other concerned individuals in project planning, implementation, and evaluation.

(Authority: 29 U.S.C. 777a(d)(2))

§ 380.14 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in §§ 380.11, 380.12, and 380.13, the Secretary, in making awards under this part, considers the geographical

distribution of projects in each program category throughout the country.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d))

Subpart C—What Post-Award Conditions Must Be Met by a Grantee?

§ 380.20 What are the information collection and reporting requirements for Statewide Supported Employment demonstration and Community-Based Supported Employment grantees?

Recipients of Statewide Supported Employment demonstration grants and Community-Based Supported Employment grants shall collect and report to the Secretary annually the following information—

(a) The number of individuals with severe handicaps receiving services from the grantee;

(b) The average cost of providing services to those individuals; and

(c) The average wage paid to those individuals.

(Authority: 29 U.S.C. 777a(d)(3)(A))

§ 380.21 What are the information collection and reporting requirements for Technical Assistance Supported Employment grantees?

Recipients of Technical Assistance Supported Employment grants shall collect and report to the Secretary annually the following information—

(a) The nature of technical assistance activities undertaken; and

(b) A description of areas where additional technical assistance is needed.

(Authority: 29 U.S.C. 777a(d)(3)(B))

[FR Doc. 88-9679 Filed 5-2-88; 8:45 am]

BILLING CODE 4000-01-M

Final Rule

**Tuesday
May 3, 1988**

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 511

Adjudicative Procedures; Automotive Fuel Economy Enforcement; Final Rule; Technical Amendment

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 511

Adjudicative Procedures; Automotive Fuel Economy Enforcement

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: Since the National Highway Traffic Safety Administration promulgated 49 CFR Part 511, its regulation governing adjudicative proceedings pursuant to section 508(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)), there has been established within the Department of Transportation an Office of Hearings which has the authority to conduct proceedings under section 508. The purpose of this rule is to amend Part 511 solely to reflect the fact that the Office of Hearings in the Department of Transportation will now be responsible for the appointment of the Presiding Officer at such proceedings, and that the Docket Section of the Office of the Secretary of Transportation shall be responsible for performing the duties which Part 511 formerly assigned to the Executive Secretary of the National Highway Traffic Safety Administration, and for maintaining the docket of proceedings brought pursuant to section 508.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Eileen Leahy, Office of Chief Counsel, NHTSA, Room 5219, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5263).

SUPPLEMENTARY INFORMATION: Section 508(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)) provides that there is a right to an agency hearing on the record prior to a determination that a manufacturer has violated a fuel economy standard, or that any person has violated section 507(a)(3) of the Act. 15 U.S.C. 2007(a)(3). The procedures governing the conduct of an adjudicative hearing under section 508(a) are set forth at Part 511 of the regulations of the National Highway Traffic Safety Administration. 49 CFR Part 511.

When NHTSA adopted Part 511, there was no office within the Department of Transportation with responsibility for appointment of hearing officers to conduct adjudicative proceedings, and for carrying out administrative functions associated with such hearings.

Accordingly, Part 511 provided that the presiding officer at adjudicative proceedings would be appointed by the Director of the Office of Administrative Law Judges, Office of Personnel Management. 49 CFR 511.3(9). The rule assigned the various administrative functions, such as the filing of pleadings and other documents, to the Executive Secretary of the National Highway Traffic Safety Administration, and provided that the docket for such proceedings would be maintained in NHTSA's docket section.

There is now within the Department of Transportation an Office of Hearings, which is authorized to conduct formal proceedings under the Motor Vehicle Information and Cost Savings Act. Therefore, it is no longer necessary to request appointment of a presiding officer for such a proceeding through the Office of Administrative Law Judges of the Office of Personnel Management. In addition, because the Office of Hearings will be responsible for appointing the presiding officer, that office should also be responsible for the other administrative functions formerly vested in the Executive Secretary of NHTSA, and for maintaining the docket of the proceedings. Centralizing these functions in one office will best ensure the efficient conduct of these proceedings.

This technical amendment merely conforms NHTSA's regulation governing adjudicative proceedings to a change in the organization of the Department of Transportation which now permits the administration of such proceedings to be centralized in one office within the Department. It affects only the agency's internal procedures, and imposes no obligations or responsibilities on any party, nor does it alter any existing obligations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and this technical amendment is effective on the date this notice is published.

The amendments to Part 511, set forth below, relate solely to procedures for the conduct of proceedings that are governed by Sections 556 and 557 of Title 5, United States Code, and thus are not covered by Executive Order 12291 and the Department of Transportation's regulatory procedures. For the same reasons, NHTSA has determined that this technical amendment will not significantly affect the human environment, after consideration in accordance with the National Environmental Policy Act. Likewise, I hereby certify that this technical amendment will not have a significant impact on a substantial number of small

entities, after making the evaluations required by the Regulatory flexibility Act. Finally, NHTSA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 511

Administrative practice and procedure, Investigations, Penalties.

In consideration of the foregoing, 49 CFR Part 511 is amended as set forth below:

PART 511—[AMENDED]

1. The authority citation for Part 511 is revised to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Section 511.3(a)(9) and (11) are revised, and (a)(13) and (14) are added to read as follows:

§ 511.3 Definitions.

* * *

(a) * * *

(9) The term "Presiding Officer" means the person who conducts an adjudicative hearing under this part, who shall be an administrative law judge qualified under title 5, U.S.C., section 3105 and assigned by the Chief Administrative Law Judge, Office of Hearings, United States Department of Transportation.

* * *

(11) The term "Office of Hearings" means the Office of Hearings, Department of Transportation.

* * *

(13) The term Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Office of Hearings, Department of Transportation.

(14) The term Docket sections means the Docket Section, Office of the Secretary of Transportation.

3. Section 511.14(a) is revised to read as follows:

§ 511.14 Form and filing of documents.

(a) **Filing.** Except as otherwise provided, all documents submitted to the Administrator or a Presiding Officer shall be filed with the Docket Section, Office of the Secretary, Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, DC 20590. Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.

* * *

4. Section 511.16(a) is revised to read as follows:

§ 511.16(a) Service.

(a) *Mandatory service.* Every document filed with the Office of Hearings shall be served upon all parties and participants to a proceeding, i.e., Complaint Counsel, respondent(s), and participants, and upon the Presiding Officer.

5. Section 511.17 is revised to read as follows:

§ 511.17 Public participation.

Participant Status. Any person interested in a proceeding commenced pursuant to § 511.11 who desires to participate in the proceeding, shall file with the Docket Section a notice of intention to participate in the proceeding and shall serve a copy of such notice on each party to the proceeding. A notice of intention to participate shall be filed not later than the commencement of the hearing. Untimely filings will not be accepted absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time. Any person who files a notice to participate in the proceeding as a nonparty shall be known as a "participant" and shall have the rights specified in § 511.41(d).

6. Section 511.26(h) is revised to read as follows:

§ 511.26 Settlement.

(h) *Rejection.* If the Administrator rejects an offer of settlement, the Administrator shall give written notice of that decision and the reasons therefor to the parties and the Presiding Officer. Promptly thereafter, the Presiding Officer shall issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

7. Section 511.31(h) is revised to read as follows:

§ 511.31 General provisions regarding discovery.

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of the taking of testimony, shall be filed with the Docket Section and served on all parties and the Presiding Officer.

8. Section 511.35(e)(2) is revised to read as follows:

§ 511.35 Testimony upon oral examination.

(e) *Transcription and filing of testimony—*

(2) *Certification and filing.* The official reporter shall certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given and corrections made by the witness. The official reporter shall then seal the transcript in an envelope endorsed with the title and docket number of the action and marked "Testimony of [name of witness]" and shall promptly file the transcript with the Docket Section. The Presiding Officer shall notify all parties of the filing of the transcript and the Docket Section shall furnish a copy of the transcript to any party or to the witness upon payment of reasonable charges therefor.

9. Section 511.38(b) is revised to read as follows:

§ 511.38 Subpenas.

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Chief Administrative Law Judge or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents or other materials or data-compilations to be produced.

10. Section 511.42(e) is revised to read as follows:

§ 511.42 Powers and duties of Presiding Officer

(e) *Disqualification of Presiding Officer.* (1) When a Presiding Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judge of the withdrawal.

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the Chief Administrative Law Judge a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Chief Administrative Law Judge on the

Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Administrator. If the Presiding Officer does not disqualify himself or herself, the Administrator will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting assignment of another Administrative Law Judge through the Office of Hearings.

11. Section 511.48 is revised to read as follows:

§ 511.48 Official docket.

(a) The official docket in adjudicatory proceedings will be maintained in the Docket Section, Office of the Secretary, Room 4107, 400 Seventh Street SW., Washington, DC 20590, and will be available for inspection during normal working hours (9:00 a.m.-5:00 p.m.) Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied as prescribed in the Department of Transportation's regulations on Public Availability of Information (49 CFR Part 7).

12. Section 511.67 is revised to read as follows:

§ 511.67 Settlement order.

If, in accordance with this subpart, the Administrator allows a settlement of a case of violation of an average fuel economy standard, an order of settlement shall be issued, setting out the terms of the settlement, and containing a brief discussion of the factors underlying the exercise of the Administrator's discretion in allowing the settlement, including a discussion of comments received under § 511.65. If the Administrator rejects a petition for settlement, the Administrator shall give written notice of the rejection and the reasons for the rejection to the parties and the Presiding Officer.

13. Section 511.73(b) is revised to read as follows:

§ 511.73 Written appearances.

(b) Any person who has previously appeared in a proceeding may withdraw his or her appearance by filing a written notice of withdrawal of appearance with the Docket Section. The notice of withdrawal shall state the name,

address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance, and such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance.

14. Section 511.75(a) is revised to read as follows:

§ 511.75 Persons not attorneys.

(a) Any person who is not an attorney at law may be admitted to appear in an adjudicative proceeding if that person files proof to the satisfaction of the Presiding Officer that he or she possesses the necessary legal, technical or other qualifications to render valuable service in the proceeding and is otherwise competent to advise and assist in the presentation of matters in the proceedings. An application by a person not an attorney at law to appear in a proceeding shall be submitted in writing to the Docket Section, not later than thirty (30) days prior to the hearing in the proceedings. The application shall set forth the applicant's qualifications to appear in the proceedings.

15. Section 511.78 (e)(1), (2)(ii), (3), (4) and (5) are revised to read as follows:

§ 511.78 Prohibited communications.

(e) Procedures for handling prohibited *ex parte* communication. (1) Prohibited

written *ex parte* communication. To the extent possible, a prohibited written *ex parte* communication received by any NHTSA employee shall be forwarded to the Docket Section rather than to a decisionmaker. A prohibited written *ex parte* communication which reaches a decisionmaker shall be forwarded by the decisionmaker to the Docket Section. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) Prohibited oral *ex parte* communication. * * *

(ii) In the event of a prohibited oral *ex parte* communication, the decisionmaker shall forward to the Docket Section a dated statement containing such of the following information as is known to him/her:

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether the person making the communication persisted in doing so

after being advised that the communication was prohibited.

(3) All communications and statements forwarded to the Docket Section under this section shall be placed in the public file which shall be associated with, but not made a part of, the record of the proceedings, to which the communication or statement pertains.

(4) Service on parties. The Administrator shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Administrator that service of the communication or statement would be unduly burdensome, he or she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying.

(5) Service on maker. The Administrator shall forward to the person who made the prohibited *ex parte* communication a copy of each communication or statement filed under this section.

* * * * *

Issued on April 29, 1988.

Diane K. Steed,
Administrator.

[FR Doc. 88-9917 Filed 5-2-88; 8:45 am]

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LIST OF PUBLIC LAWS**Last List April 29, 1988**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 5/Pub. L. 100-297

Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. (Apr. 28, 1988; 102 Stat. 130; 302 pages) Price: \$9.00

S. 858/Pub. L. 100-298

Abandoned Shipwreck Act of 1987. (Apr. 28, 1988; 102 Stat. 432; 3 pages) Price: \$1.00

S.J. Res. 246/Pub. L. 100-299

To designate the month of April 1988, as "National Child Abuse Prevention Month." (Apr. 28, 1988; 102 Stat. 435; 2 pages) Price: \$1.00

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1. The first part of the paper is a general introduction to the subject of the paper. It is a very short and simple introduction, but it is necessary to have it in order to give the reader a general idea of the subject of the paper.

2. The second part of the paper is a description of the method used in the experiment. It is a very detailed description, and it is necessary to have it in order to know exactly what was done in the experiment.

3. The third part of the paper is a description of the results of the experiment. It is a very detailed description, and it is necessary to have it in order to know exactly what was found in the experiment.