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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Revision of User Fees and Other Administrative Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is increasing the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary one and all costs are covered by user fees. The higher fees, including an increase in the current base rate of $19.00 to $33.00 per hour, reflect the increased program costs that have occurred since the fees were last adjusted in November 1977.

Other changes in the program's regulations will: (1) Permit the Agency to reject an application for grading service if any payments by the applicant for prior services have not been paid within 30 days of the billing, rather than 60 days as now; (2) delete the requirements of a surety bond for certain prospective industry licensees; (3) modify the list of individual tests in the laboratory analysis schedule for which there are charges; (4) increase the charges made for such laboratory analysis; (5) delete the charge to applicants of an administrative charge equal to an additional 10 percent of actual travel expenses; and (6) establish the same hourly rate charge for the "assistant" inspector or grader in resident programs as for the inspector or grader in charge. The increased laboratory charges recognize increased program costs and the other changes will result in more efficient program operations and reflect greater fiscal responsibility.

EFFECTIVE DATE: June 19, 1988.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/Dairy Division, Dairy Grading Section, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 382–9381.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "non-major" rule under the criteria contained therein.

This final rule has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that it will not have a significant economic impact on a substantial number of small entities. The Agricultural Marketing Service estimates that overall this rule will yield an additional two million dollars per year over current fees. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the fees for grading and other program services.

The current fees for program services have been in effect for over 10 years (since November 1977). During the early 1980's requests for services increased significantly due to increases in milk production. While program expenses did increase, revenues increased at a higher rate. Accordingly, the program began accumulating increased operating reserves. During those years, it was necessary for all personnel qualified to carry out grading and inspection work (including many supervisors) to be fully occupied with revenue-producing work. By the end of fiscal year 1983, the program had accumulated a reserve of $6.2 million—sufficient revenue to cover nine months of operating expenses.

More recently, the volume of grading work has been declining, with an accompanying decline in revenue. At the same time, operating costs have continued to increase, due largely to increases in salaries, travel reimbursements, and other administrative and supervisory costs. Fees remained unchanged and the reserve was reduced. In fiscal years 1984 through 1987, the program's financial reserves were reduced by about $4 million (with annual operating deficits of up to $2.3 million). At the end of fiscal year 1987, the reserve was $2.1 million—less than the 4 months of operating reserves (about $3 million) that are considered appropriate for the program.

Normal operating costs are continuing to increase. In addition, the Agency has identified three vital areas that require improvement and added resources—training, supervision and automation.

The workload decrease that began in 1986 and continued into 1987 stemmed from the Dairy Termination Program and the resulting decline in Government purchases of dairy products under the price support program. The workload for 1988 will probably be similar to that of 1987.

For the above reasons, fee increases are imperative. Without the increases, the program will lose more than $2 million during fiscal year 1988, which would deplete the operating reserve. The Agricultural Marketing Act of 1946, which authorizes the inspection and grading program, requires that fees cover the cost of the services provided.

The fee increases (ranging from 18 percent to 74 percent above the current rates) are lower than the 86 percent increase in the Consumer Price Index that occurred during the 10-year period (1977 to 1987) in which grading fees remained unchanged.

2. Redefines when service may be rejected due to late payment.

The grading program regulations now state that "an application for inspection or grading service may be rejected by the Administrator when payment of fees is delinquent over 60 days." Current good commercial practice for billing and collection classifies payments not made within 30 days of billing as delinquent. This final rule permits the Agency to reject an application for grading service if any fees previously billed to the applicant were not paid within 30 days. The change will encourage the timely payment of fees.

3. Deletes the requirement of bonding industry personnel involved in USDA grade label programs.

Current regulations require a surety bond from prospective licensees who are not Federal or State employees and who are not under immediate USDA resident grader supervision. In the dairy grading program, this requirement applies to those plant employees who have been selected as supervisors of packaging for USDA grade labeled products. A recent review of the administration of the program has shown that the surety bond is an unnecessary requirement. No claims have been made by the Agency against existing bonds for violations by licensed and bonded plant employees in the performance of their duties. This final rule eliminates the surety bond requirement for plant employees.

4. Deletes laboratory fees for tests which are no longer provided by the Dairy Division. Add laboratory fees for new tests that are available.

In addition to the increase in fees for each of the listed laboratory tests, four other laboratory-related changes are adopted to reflect current Dairy Division activities:

(a) The test for "Corn-Soya-Milk" is deleted because the authority for the sampling and testing of this product was transferred to the Federal Grain Inspection Service on October 6, 1983.

(b) "Meat and Related Products" are added to properly identify the specific tests that the Dairy Division is performing for the Agency's Livestock and Seed Division.

(c) A fee for antibiotic testing is added for dry milk and related products.

(d) A fee for testing process cheese for meltability is added for cheese and related products. This test is required by the Department's Agricultural Stabilization and Conservation Service for cheese-conversion and direct-purchase contracts for pasteurized process cheese.

5. Changes the method for determining travel expenses.

The current regulations provide that, in addition to travel costs, per diem and other expenses, applicants are to be charged an additional 10 percent of those expenses "to cover administrative costs of AMS." The fee increases include administrative and supervisory costs associated with the program. Therefore, the additional 10 percent charges are no longer necessary. This final rule eliminates the additional 10 percent requirement.

6. Changes the method for calculating the rate for determining continuous resident service.

Current regulations provide a two-tiered rate schedule for the inspector or grader in charge of a resident program and an assistant inspector or grader. Current operational costs do not justify a lower charge for the assistant as now provided in the regulations. This final rule will establish the same charge for any assistant resident inspector or grader as for the inspector or grader in charge.

7. Makes miscellaneous non-substantive changes to clarify several of the provisions.

Response to Industry Comments

A rulemaking document proposing the changes discussed above was published in the **Federal Register** on February 17, 1988 (53 FR 4639). A 30-day comment period was provided so that interested persons could submit their views and comments. At the request of industry members, the comment period was extended 14 days, to April 1, 1988.

The Agency received comments from 11 parties, including proprietary processors, dairy cooperatives, and nationwide industry organizations. The comments and the Agency's responses are set forth below.

Many of the comments focused on the economic impact that the proposed increase in program fees would have on processors of dairy products and on milk producers. It was contended that the magnitude of the increases would make it difficult for processors to pass these additional costs along through the marketing chain. Processors claimed that they would have to absorb the fee increases or reduce their pay prices to the dairy farmers supplying them with milk.

With respect to other comments in opposition to the fee increases, one commenter believed that the current efforts to automate program operations should yield offsetting savings. Another party stated that the fee increases were in excess of the current rate of inflation. It was also suggested that the quality of service has declined. Other commenters indicated that the program needed to be operated more efficiently and that the staffing level should be reduced. One commenter stated that the Agency should have increased its fees more frequently, thus avoiding fee increases of the magnitude that was being proposed.

In another comment, it was urged that the fee increases be phased in over a two-year period. The commenter proposed that during this phase-in period the Agency undertake an extensive study of how to operate the program more efficiently.

The concerns about the size of the fee increases are understandable. The increases are substantial and undoubtedly will have an impact on those processors using the program's services. In this regard, processors will have to decide how best to assimilate these additional costs into their operations. Some may even conclude that it is no longer desirable to use the inspection and grading program.

As stated earlier in this document, the Agricultural Marketing Act of 1946 requires that the cost of the grading program be borne through user fees. It is thus necessary to set the fees at a level that assures that the program costs are covered. As noted, the program has been operating for some time at a loss because of inadequate fees. However, higher fees were not instituted earlier because of the excess financial reserves that were generated by the heavy workload during the period of unusually heavy milk supplies. With the reserve fund nearly depleted, it is imperative that the program fees be increased immediately by the amounts adopted herein. The program cannot continue to operate at a deficit.

The Agency will continue to make every effort to operate the program as efficiently as possible. Program operations, such as staffing, automation, and quality of services, are continuously under review by program managers, and operating costs are monitored closely. The intent is to have a program that is cost-effective and at the same time responsive to the needs of the industry and the need for program integrity.

Several commenters indicated that they believe that there is a need for industry input into the operation of the inspection and grading program. It was their position that a concerted effort should be made to find ways of improving the efficiency of the program and reducing program costs.

The Agency is committed to the effective implementation and efficient management of the program. It is prepared to participate in dialogue with individuals and groups on such matters.

A number of parties expressed concern about the program costs associated with the testing of dairy products. It was suggested that testing costs could be reduced through the centralization of laboratories or by contracting out testing activities to private laboratories. It also was suggested that any laboratory fee increases be delayed until a cost comparison could be made regarding commercial vs. Agency laboratories.

For the reasons already described, it is necessary to implement the fee increases as soon as possible. However, the Agency is willing to explore the laboratory issue with the industry to ascertain whether there are more cost-effective means of providing the testing

services desired by industry members. In addition, the Agency is currently reviewing the operation of all Agency laboratories to determine if changes are desirable. These include the possible centralization of laboratories and more extensive oversight.

It was requested that implementation of the fee increases be delayed so that processors would not become subject to higher fees during existing processing contracts. The concern was that processors could not recover from their market outlets an increase in fees that occurs during the course of a contract.

As indicated, an immediate increase in fees is needed to stem the current operating losses. Thus, there should be no delay in the fee increases. However, in view of the time needed to complete this rulemaking action, the new fees will not become effective until June 19, 1988. The should provide most members of the industry with the opportunity to reflect the higher fees in bids on future contracts. It also is noted that the industry was forewarned about possible fee increases. This occurred through industry publications, varous industry meetings, and the proposed rule that was published in the Federal Register on February 17, 1988.

Several commenters were concerned about having to absorb an increase in fees under the inspection and grading program. To help offset the fee increases, they requested that the Department increase the "make allowance" under the dairy price support program. Through this means, processors presumably would be able to recover more of their operating costs, which includes grading fees, through the value of the products sold under the support program.

Grading fees are established pursuant to the Agricultural Marketing Act of 1946 which authorizes the Agricultural Marketing Service inspection and grading program and requires that such fees cover the cost of services provided. The price support program is administered by the Agricultural Stabilization and Conversation Service which estimates industry costs of manufacturing butter, cheese and nonfat dry milk. This estimate, or "make allowance," is then used as one of several factors in setting the purchase prices under the support program for surplus dairy products. Since the price support program is administered by another Agency pursuant to different authority, the commenters suggestion is outside the scope of this rulemaking and cannot be included herein.

One commenter was concerned about the recent decision by the Agency to require additional inspectors/graders at certain plants. Although not specifically stated in the comments, it is presumed that the concern stems from the additional costs that these plants would incur in using the additional inspection and grading services.

The decision to require additional Agency employees at certain plants was based on the determination that this is necessary to assure the integrity of the inspection and grading program. In some cases, it is not possible for one inspector to monitor a plant's processing activities to the extent the Agency considers necessary. This may be because the plant's operations are simply too large for one person to monitor, or the plant has extended hours of operation, or the various activities to be monitored are spread out over several areas of the plant. The Agency decided in some situations that additional staffing was necessary to assure that the purpose of the services being provided was in fact being carried out. This, of course, means additional costs to the processors who are affected by this decision.

Certain commentors asked that the Agency provide the industry with additional information concerning costs under the inspection and grading program. The requests were as follows: (1) Provide an up-to-date benchmark of cost per hundredweight of grading as an industry average to assist the industry in evaluating individual plant costs, and (2) provide the percentage of revenues being allocated for training, overhead, computer processing, and other support elements under the program.

The Agency is willing to work with the industry in developing information regarding program costs. A dialog between the Agency and industry members on this issue will facilitate the compilation of data that will be most useful to the industry.

One commenter objected to the fee increases partly because the fees do not recognize regional differences in labor costs. It was claimed that labor costs in his area were much lower than in other areas of the country and that the program fees were too high relative to the salaries of the State employees who are doing the program work in his area for the Agency.

It is impractical to recognize in the fees charged a particular plant the salary and related benefits associated with each individual inspector or grader who provides service to the plant. The salaries and benefits of employees frequently vary. Also, employees are often rotated among plants. The Agency believes that a uniform fee structure represents a fair system for charging processors for the services provided.

In the proposed rule, the Agency recommended a change in the conditions under which an application for service could be rejected by the Agency. Currently, an application for inspection or grading service may be rejected if any fees previously billed to the applicant were not paid within 60 days. It was proposed that this time period be reduced to 30 days. Certain commentors contended that while they recognized the need for the prompt payment of fees, the 30-day limit was more stringent than what the U.S. Government abides by when paying processors for dairy products purchased under the price support program. The parties urged that the 60-day limit be retained.

The Agency has the responsibility for operating the inspection and grading program in a prudent manner. The 30-day limit is in keeping with this responsibility and will foster the timely payment of fees.

Information Collection Requirements and Recordkeeping

Information collection requirements and the recordkeeping provision contained in 7 CFR Part 58, Subpart A, have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0126.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the Federal Register. The Agricultural Marketing Act of 1946 requires that fees cover the cost of the services provided under the inspection and grading program. The present fees are not covering the cost of such services, and the program's financial reserves are being depleted. An immediate increase in fees is essential to the operation of the program.

The provisions of this final rule are known to interested parties. A proposed rule setting forth the fee increases and other administrative changes adopted herein were published in the Federal Register on February 17, 1988. The changes effected by this final rule will not require extensive preparation or substantial changes in operation by those persons using the program's services.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

For the reasons set forth in the preamble, 7 CFR Part 58, Subpart A is amended as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for Part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.12 is amended by revising paragraph (h) to read as follows:

§ 58.12 When application may be rejected.

* * * * *

(h) When fees billed are not paid within 30 days; or

* * * * *

3. Section 58.33 is revised to read as follows:

§ 58.33 Who may be licensed.

Any person processing proper qualifications, as determined by an examination for competency, held at such time and in such manner as may be prescribed by the Administrator, may be licensed to perform specified inspection or grading service. Each license issued shall be signed by the Administrator.

4. Section 58.42 is revised to read as follows:

§ 58.42 Travel expenses and other charges.

Charges shall be made to cover the cost of travel and other expenses incurred by AMS in connection with the performance of any inspection or grading service.

5. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in this section and §§ 58.38 through 58.47, charges shall be made for inspection, grading, and sampling service at the hourly rate of $33.00 for service performed between 6 a.m. and 6 p.m., and $36.40 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

6. Section 58.44 is revised to read as follows:

§ 58.44 Fees for laboratory analysis.

Except as otherwise provided in this section and § 58.45, charges shall be made for laboratory analysis at the hourly rate of $24.00 for the time required to perform the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued. The following minimum rates per test, which are based on the average time required to perform the test specified, shall apply unless the actual time required to perform the test is greater than the minimum set forth:

(a) Dry milk and related products:

Total fat (either extraction)	$4.35
Moisture	3.35
Titratable acidity	1.65
Solubility index	2.25
Scorched particles	2.25
Bacterial plate count	4.35
Bacterial direct microscopic count	6.50
Flavor	1.15
Whey protein nitrogen	10.95
Vitamin A	21.70
Alkalinity of ash	24.00
Dispersibility	10.95
Coliform (solid media)	4.35
Salmonella	24.00
Phosphatase	24.00
Oxygen	13.00
Density	1.65
Antibiotic	8.05

(b) Condensed milk and related products:

Fat (fat extraction)	$6.50
Total solids	4.35
Sugar (sucrose)	24.00
Net weight (per can)	2.65
Flavor, color, body, texture	1.65

(c) Cheese and related products:

Moisture	$4.35
Moisture in duplicate	6.50
Total fat (either extraction)	7.65
Moisture and fat (dry basis) complete	12.00
Meltability (Process cheese)	4.35

(d) Butter and related products:

Moisture	$4.35
Fat	8.65
Salt	4.35
Complete Kohman analysis	13.00
Fat and moisture (same sample)	10.95
Flavor, odor, body, texture	2.25
Peroxide value	24.00
Free fatty acid	10.95
Yeast and mold	5.50
Proteolytic count	5.50

(e) Meat and related products:

Fat (hamburger)	$11.25

7. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) or grader(s) assigned to a continuous resident program shall be made at the hourly rate of $24.00 for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tours of duty shall be made at a rate of 1½ times the rate stated in this section.

8. Section 58.47 is revised to read as follows:

§ 58.47 Fees for continuous nonresident service.

Irrespective of the fees and charges provided in §§ 58.39, 58.42 and 58.43, charges for continuous nonresident service shall be made at the hourly rate of $36.00 for services performed between 6 a.m. and 6 p.m., and $39.40 for services performed between 6 p.m. and 6 a.m., for the number of hours each inspector or grader is assigned, including the travel time at the beginning and end of the period. Travel expenses are included in the hourly rates. The charge for holiday, Saturday or Sunday work or overtime (work in excess of each eight-hour shift Monday through Friday) shall be at $52.50 per hour.

Signed at Washington, DC on May 27, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–12438 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–02–M

Federal Crop Insurance Corporation

7 CFR Part 405

[Amdt. No. 1; Doc. No. 5532S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Wednesday, January 20, 1988, at 52 FR 1467. The interim rule amended the Apple Crop Insurance Regulations (7 CFR Part 405), by adding a new section, 7 CFR 405.9, Pilot Sunburn Option Amendment.

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of

these regulations under those procedures. The sunset review date for these regulations is April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, January 20, 1988, FCIC published an interim rule, in the **Federal Register** at 52 FR 1467, amending the Apple Crop Insurance Regulations (7 CFR Part 405), by adding a new section, 7 CFR 405.9, Pilot Sunburn Option Amendment.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 405

Crop insurance, Apple crop insurance regulations.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Wednesday, January 20, 1988, at 52 FR 1467, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on May 31, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–12541 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 440

[Amdt. No. 1; Doc. No. 5539S]

Texas Citrus Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1989 crop year. The intended effect of this final rule is to maintain the effectiveness of the present Texas Citrus Tree Crop Insurance Regulations only through the 1988 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.134, Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter

IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 440 will be effective only through the end of the 1988 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Texas Citrus Tree Endorsement will be published as an endorsement to 7 CFR Part 401 (401.134, Texas Citrus Tree Endorsement), and become effective for the 1989 and succeeding crop years.

Upon final publication, the provisions of the Texas Citrus Tree Crop Insurance Regulations, now contained in 7 CFR Part 440, would be superseded. Therefore, FCIC amends the subpart heading to provide that 7 CFR Part 440 be effective for the 1987 and 1988 crop years only.

On Tuesday, February 16, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 4413, to maintain the effectiveness of the present Texas Citrus Tree Crop Insurance Regulations only through the 1988 crop year. The public was given 30 days in which to submit written comment, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 53 FR 4413 is herewith adopted as final.

List of Subjects in 7 CFR Part 440

Crop insurance, Texas citrus tree.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Subpart heading to the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), as follows:

PART 440—[AMENDED]

1. The Authority citation for 7 CFR Part 440 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 440 is revised to read as follows:

Subpart—Regulations for the 1987 and 1988 Crop Years

Done in Washington, DC on May 31, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–12542 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 1421, 1413 and 1470

Price Support and Production Adjustment Programs

AGENCY: Agricultural Stabilization and Conservation Service; Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends 7 CFR Part 1421 by combining as one subpart the subparts currently contained in Part 1421 which set forth the price support loan and purchase program regulations for the 1988 and subsequent crops of barley, corn, sorghum, oats, farm-stored peanuts, rice, rye, soybeans, and wheat. These amendments will provide greater uniformity in program administration and delete repetitive provisions. This interim rule also amends Part 1421 by revising: (1) The date by which a producer must reapply for a price support loan in the event the Commodity Credit Corporation ("CCC") has not disbursed the loan proceeds within a specified time; (2) the manner in which price support rates are determined when adjoining towns in different counties are considered to be one shipping point; (3) the information which must be entered on a warehouse receipt in order for such receipt to be used in obtaining a price support loan; and (4) the grade requirements which must be met by commodities pledged as collateral for a warehouse-stored price support loan. These amendments will provide for greater program uniformity.

DATE: Effective June 3, 1988. Comments must be received on or before July 5, 1988 in order to be assured of consideration.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jackie Stonfer, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447–4704.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that the provisions of this rule 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; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to the interim rule since Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporations (CCC) is 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 not significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

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

Currently the regulations which set forth the terms and conditions of the CCC production adjustment programs are set forth at 7 CFR Part 713 and the terms and conditions under which CCC may make payments in a form other than cash are set forth at 7 CFR Part 770. Generally, those regulations which are set forth in Chapter VII of Title 7 of the Code of Federal Regulations pertain to the functions of ASCS, including the functions which relate to the implementation and administration of CCC programs. The regulations which are set forth in Chapter XIV of Title 7 of the Code of Federal Regulations pertain to the functions of CCC. Therefore, it has been determined that those regulations which are currently set forth at 7 CFR Parts 713 and 770 are more properly suited for codification in Chapter XIV of Title 7 of the Code of Federal Regulations since the activities which are governed by these regulations are CCC functions. Accordingly, it would be more appropriate and clearer to interested persons to have these regulations within Chapter XIV, Commodity Credit Corporation, Department of Agriculture. The new section numbers for each of the existing sections are provided in the table below:

Old Section	New Section
713.1–713.157	1413.1–1413.157
770.1–770.7	1470.1–1470.7

The regulations which are set forth at 7 CFR Part 1421 set forth the terms and conditions under which CCC will make available price support loans and purchase agreements for barley, corn, farm-stored peanuts, oats, rye, sorghum, soybeans, rice and wheat. Currently, the regulations which are applicable to all such commodities are set forth in §§ 1421.1–1421.30 and all other regulations are set forth in individual subparts which are applicable to each such commodity. Since the program provisions which govern price support loans and purchase agreements for these commodities are identical in many instances, it has been determined that it would be more efficient to have all loan and purchase agreement provisions codified in one subpart of 7 CFR Part 1421.

The regulations at 7 CFR 1421.6(a)(2) currently provide that if CCC does not disburse price support loan proceeds by the last day of the calendar month following the month in which the loan application is made, the producer must reapply for the loan. Based upon the current level of price support loan activity and the time needed by CCC to process loan applications, it has been determined that producers should not be required to reapply for such loans during such a short period of time. Accordingly, in order to alleviate the need for most producers to reapply for such a loan, this interim rule amends 7 CFR 1421.6(a)(2) to provide that a producer must reapply for a price support loan only if the loan has not been disbursed within 30 days of the final loan availability date, or such other date as may be announced by CCC.

The regulations at 7 CFR 1421.59, 1421.99, 1421.219, 1421.254, 1421.344, 1421.374, and 1421.470, provide for the adjustment of the basic county support price for barley, corn, sorghum, oats, rye, soybeans and wheat, respectively, in the event two or more CCC-approved warehouses are located in the same or adjoining towns which have the same freight rate even though such warehouses are located in the same county. In such an event, the support rate is the highest of the support rates involved. Due to the deregulation of most freight rates, and due to changes in commodity marketing, it has been determined that it is no longer appropriate to adjust the basic county support price for these commodities under these circumstances. Accordingly, these provisions are not included in the revised price support loan and purchase provisions of 7 CFR Part 1421.

The regulations at 7 CFR 1421.18(c)(3) currently set forth some of the terms and conditions with respect to the reconcentration of grain pledged as collateral for price support loans. The reconcentration of certain commodities results in an adjustment to the basic county loan rate to reflect costs incurred in movement of loan collateral. CCC recently amended the regulations at 7 CFR Part 1421 to provide for a more uniform administration of CCC's policies with respect to increasing basic county loan rates to reflect costs incurred in the movement of CCC loan collateral. (See 53 FR 6131, dated March 1, 1988). Accordingly, in order to conform to this previous amendment, this interim rule deletes references in 7 CFR 1421.18(c)(3) with respect to the method used by CCC in adjusting basic county loan rates when the reconcentration of CCC loan collateral is approved.

The regulations at 7 CFR 1421.9 currently set forth the information which must be specified on warehouse receipts which are tendered to CCC in connection with a price support loan or purchase agreement. This interim rule amends 7 CFR 1421.9 by setting forth with greater specificity those entries which must be included on such a warehouse receipt. This amendment will provide greater uniformity in the administration of CCC price support programs and will assist CCC in determining with greater accuracy the quality and location of: Grain pledged as collateral for price support loans; grain acquired through price support purchase agreements; and grain acquired through price support loan forfeitures.

The individual commodity subparts for barley, corn, sorghum, oats, rice, rye, soybeans and wheat set forth the grade requirements which must be met by commodities pledged as collateral for warehouse-stored CCC price support loans. This interim rule combines these provisions at 7 CFR 1421.18, and also incorporates new grading requirement terminology which is currently used by the Federal Grain Inspection Service.

In addition, this interim rule makes changes throughout 7 CFR Part 1421 for purposes of grammar and clarity.

Since producers will soon be pledging as collateral for CCC price support loans 1988-crop commodities, it has been determined that this interim rule will become effective upon publication in the **Federal Register**. Comments, however, are requested and will be taken into consideration in developing the final rule.

List of Subjects

7 CFR Part 713

Feed grain, Rice, Upland and extra long staple cotton, wheat and related programs.

7 CFR Part 770

Commodity certificates, In kind payments, other forms of payment.

7 CFR Part 1413

Feed grain, Rice, Upland and extra long staple cotton, and wheat and related programs.

7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, warehouses.

Accordingly, Title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1421—[AMENDED]

1. Part 1421 is amended by revising the subpart heading "Subpart-General Regulations Governing Price Support for the 1987 and Subsequent Crops" to read "Price Support Regulations for the 1988 and Subsequent Crops of Wheat, Feed Grains, Rice, Soybeans, and Farm-Stored Peanuts".

2. The authority citation for Part 1421 is revised to read as follows:

Authority: Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); sections 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 91 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446, 1447, 1421, 1423, and 1425).

3. The table of contents for Subpart-Price Support Regulations for the 1988 and Subsequent Crops of Wheat, Feed Grains, Rice, Soybeans, and Farm-Stored Peanuts of Part 1421 is revised to read as follows:

Subpart-Price Support Regulations for the 1988 and Subsequent Crops of Wheat, Feed Grains, Rice, Soybeans, and Farm-Stored Peanuts

Sec.

1421.1 Applicability.
1421.2 Administration.
1421.3 Definitions.
1421.4 Eligible Producers.
1421.5 General eligibility requirements.
1421.6 Maturity and expiration dates.
1421.7 Adjustment of basic support rates.
1421.8 Approved storage.
1421.9 Warehouse receipts.
1421.10 Warehouse charges.
1421.11 Liens.
1421.12 Fees, charges, and interest.
1421.13 Insurance on farm-stored loans.

Sec.
1421.14 Setoffs.
1421.15 Loss or damage to the commodity.
1421.16 Liability of produce.
1421.17 Farm-stored loans.
1421.18 Warehouse-stored loans.
1421.19 Liquidation of loans.
1421.20 Release of the commodity loan under loan.
1421.21 Purchase agreements.
1421.22 Settlement.
1421.23 Foreclosure.
1421.24 Protein determinations.
1421.25 Rice marketing loans and marketing certificates.
1421.26 Transfer of farm-stored loan to warehouse-stored association loan.
1421.27 Producer-handler purchases of additional peanuts under loan.
1421.28 Required producer-handler records and supervision of farm-stored additional peanuts under loan or purchased by producer-handler from loan.
1421.29 Death, incompetency, or disappearance.
1421.30 Recourse loans.
1421.31 Handling payments and collections not exceeding $9.99.
1421.32 Paperwork Reduction Act assigned numbers.

3. Sections 1421.1 and 1421.2 are revised to read as follows:

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1988 and subsequent crops of barley, corn, oats, peanuts, rice, rye, sorghum, soybeans, and wheat. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement and the purchase agreement which must be executed by a producer in order to receive price support. With respect to warehouse-stored loans for peanuts, such loans shall be made in accordance with Part 1425 of this chapter.

(b) Basic county price support rates, the schedule of premiums and discounts, and forms which are used in administering the price support program for a crop of a commodity are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively).

(c) Price support loans and purchase agreements shall be available only with respect to rice produced in the continental United States. Farm-stored price support loans and purchase agreements shall be available only with respect to farmer stock peanuts, as defined in Part 1446 of this chapter, which are produced in the United States which are of a type specified in Part 729 of this title. Price support loans and purchase agreements shall be available with respect to all other eligible commodities produced in the United States. Price support loans and purchase agreements shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1421.2 Administration.

(a) The price support program which is applicable to a crop of a commodity shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or (2) require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1421.4 [Removed]

§ 1421.3 [Redesignated as § 1421.4]

4. Section 1421.4 is removed and current § 1421.3 is redesignated as § 1421.4.

5. A new § 1421.3 is added as follows:

§ 1421.3 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Parts 719 and 1413 of this title shall also be applicable.

(b) "Basic support rate" means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

(c) "Charges" means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

6. In newly redesignated § 1421.4 paragraphs (a), (d), (g), (h), and (i) are revised to read as follows:

§ 1421.4 Eligible producer.

(a) *Producer.* An eligible producer of a crop of commodity shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this Part; and

(3) Meets the requirements of Parts 12, 718, and 1413 of this title. Producers who are members of an approved marketing cooperative must furnish the cooperative a completed Form CCC–822, Certificate of Eligibility, before the cooperative may request price support with respect to the producer's commodity.

* * * * *

(d) *Joint loans.* (1) Two or more producers may obtain a single joint loan with respect to commodities which are stored in the same farm storage facility. Two or more producers may also obtain individual loans with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form CCC–665 which provides that such producers shall obtain the permission of a representative of the

county committee prior to removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities which have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities.

(2) Two or more producers may obtain a single joint loan with respect to commodities which are stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

* * * * *

(g) *Approved cooperative.* A cooperative marketing association which has been approved in accordance with Part 1425 of this chapter may obtain price support on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subpart, the term "producer" includes an approved cooperative marketing association.

(h) *Peanut producer.* With respect to peanuts tendered to CCC for price support, a producer must also meet the provisions of 7 CFR 1446.63. Prior to obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler in accordance with Part 729 of this title.

(i) *Restrictions in the use of agents.* A producer shall not delegate to any person (or any agent or representative of such person), except to a farm manager, who has an interest in storing, processing, or merchandising any commodity which is eligible to receive price support in accordance with this subpart the authority to exercise on behalf of the producer any of the producer's rights which arise in accordance with this subpart.

7. Section 1421.5 is revised to read as follows:

§ 1421.5 General eligibility requirements.

(a) *Application for price support.* A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with Part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC or at the county office for the county in which the principal office of the cooperative is located. All note and security agreements, purchase agreements and related documents necessary for the administration of price support programs shall be determined by CCC and are available at State and county offices. In order to receive price support for a crop of a commodity, a producer must execute a note and security agreement or purchase agreement on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: Quota peanuts pledged as collateral for a farm-stored loan; barley; oats; rye; and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; and

(4) May 31 of the year following the year in which the following crops are normally harvested: Corn, sorghum; rice; and soybeans.

(b) *Quality and quantity.* (1) Commodities must be tendered to CCC by an eligible producer and must be in existence at the time of disbursement of loan or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances posionous to humans or animals. Such commodities must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat or one percent or more by weight of kernels visibly damaged by weevils or other insects.

(2) With respect to barley, corn, oats, sorghum, soybeans, rice, rye, and wheat, the determination of class, grade, grading factors, milling yields, and other quality factors shall be based upon the Official Grain Standards of the United States and the Official Rice Standards of the United States as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC. With respect to peanuts, the determination of type, quality, and quantity shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn. If the collateral is ear corn, the producer must: (i) Before delivery to CCC, shell such corn without cost to CCC; and (ii) before shelling, have the approval of CCC. Corn pledged as collateral for a warehouse-stored loan or tendered in accordance with a purchase agreement must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of corn free of dockage;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be in tons and tenths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of rye shall be 56 pounds of rye free of dockage;

(vii) A bushel of soybeans shall be 60 pounds of soybeans that contain no more than one percent foreign material.

(viii) A bushel of sorghum shall be 56 pounds of sorghum free of dockage; and

(ix) A bushel of wheat shall be 60 pounds of wheat free of dockage.

(5) With respect to farm-stored loans and purchase agreements, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC.

(c) *Beneficial interest.* (1) To be eligible to receive price support, a producer must have the beneficial interest in the commodity which is tendered to CCC. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan or purchase agreement shall be eligible to receive price support whether

succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this Part. Such succeeding producer must assume a substantial interest in and responsibility for production of the commodity. Mere purchase or inheritance of a crop prior to harvest without the acquisition of any additional interest in the farm on which the crop is produced shall not constitute succession of a beneficial interest.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer enters into a contract to sell or gives an option to buy the commodity if, under the contract or option the producer retains control, risk of loss and title to the commodity subject to such agreement and retains control of the production of the commodity. Commodities obtained by purchase shall not be eligible to be tendered to CCC for price support.

(3) Notwithstanding the provisions of paragraphs (c) (1) and (2) of this section, a producer may pledge as collateral for a loan commodities in which the producer does not have a beneficial interest if CCC determines that the producer has a quantity of a commodity which is eligible to receive price support and that the commodities tendered to CCC will receive price support in an amount not to exceed the amount which would have been provided with respect to the eligible commodities. If CCC approves such a request for price support, the producer shall not otherwise receive price support with respect to the eligible commodity, except as may be determined and announced by CCC. Any such request must be made in the manner prescribed by CCC and must be made at the county office which is authorized to make a price support loan to the producer.

(4) If price support is made available to producers through an approved marketing cooperative in accordance with Part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the cooperative except as otherwise provided in this subsection. Commodities delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in Part 1425 of this chapter.

(d) *Redeemed loan collateral.* Except with respect to commodities which have been acquired in accordance with Part 1470 of this chapter and with respect to commodities which have been redeemed at a rate which is less than the original price support level, a producer may, before the final date for obtaining a price support loan for a commodity, reoffer as collateral for such a loan any commodity that had been previously pledged as collateral for a price support loan. The subsequent loan shall have the same maturity date as the original loan.

8. Section 1421.6 is revised to read as follows:

§ 1421.6 Maturity and expiration dates.

(a) *Loans.* (1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) If the loan proceeds are not disbursed within 30 days after the final loan availability date or such other date which is determined and announced by CCC, the producer must reapply for the loan.

(3) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated maturity date.

(b) *Purchase agreements.* (1) With respect to all commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated expiration date.

9. Section 1421.7 is revised to read as follows:

§ 1421.7 Adjustment of basic support rates.

(a) *General.* Basic support rates may be established on a State, regional, or county basis and shall be adjusted in accordance with the schedule of premiums and discounts which is applicable to the commodity and as otherwise provided in this section.

(b) *Weed control laws.* If CCC determines that State, district, or county weed control laws affect the value of a commodity, the basic support rate shall be reduced to reflect the reduction in value of the commodity unless the producer or storing warehouseman furnishes a certification from the appropriate weed control official that the commodity complies with weed control laws. The storing warehouseman must also agree to hold CCC harmless for any loss or penalty which arises from the violation of such laws. The certification by the warehouseman shall be in substantially the following form:

Certification

This is to certify that the commodity evidenced by warehouse receipt No. ____ issued to ____ is not subject to seizure or other action under weed control laws or regulations in effect at the point of storage. It is further certified and agreed that if such commodity is acquired by CCC in settlement of a loan or purchase agreement, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt. (Signature) _____

(c) *Basic support rates for farm-stored loans.* (1) With respect to all commodities except peanuts, farm-stored loans shall be disbursed at the basic county support rate for the county where the commodity is stored adjusted for weed control law discounts.

(2) With respect to quota and additional peanuts, farm-stored loans shall be disbursed at the basic support rates established by CCC for such peanuts.

(d) *Basic support rates for warehouse-stored loans and purchases.* (1) With respect to all commodities except peanuts, warehouse-stored loans and purchase agreement payments shall be made on the basis of the basic county rate for the commodity adjusted for:

(i) Weed control law discounts; and

(ii) The schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to quota and additional peanuts, payments made in accordance with a purchase agreement shall be at the basic support rate established by CCC for such peanuts.

(e) *Adjustment of basic county support rates.* (1) This subsection is applicable to corn pledged as collateral for farmer-owned reserve loans and for barley, oats, rye, sorghum and wheat pledged as collateral for regular price support loans and farmer-owned reserve loans.

(2) The applicable basic support rate for commodities pledged as collateral for a warehouse-stored loan that were received by rail or combination barge-rail shall be the basic support rate established for the county from which the commodity was shipped. The

support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Assistance; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(3) The applicable basic county support rate for commodities delivered by truck by the producer to a warehouse at a normal delivery point shall be the support rate for the county where the commodity is stored, adjusted for the premiums and discounts determined by CCC. The basic county support rate for commodities delivered by truck by the producer to (i) an in-line warehouse, or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which the commodity was shipped, adjusted for premiums and discounts determined by CCC. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Assistance; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(4)(i) Supplemental certificates must be issued by the warehouse which receives commodities which have been removed in accordance with paragraphs (e) (2) and (3) of this section. Such certificates must show:

(A) The rate of freight paid into the storage point;

(B) The amount of any penalty for backhaul or out-of-line movement;

(C) The applicable normal trade channel market that would be used in commercial channels of trade; and

(D) Any other information which may be prescribed by CCC.

(ii) The warehouseman shall be responsible for the accuracy of such information and shall be liable for any cost incurred by CCC for the failure to comply with the provisions of this paragraph. After the acquisition of the warehouse receipt by CCC, such costs shall be determined in accordance with the provisions of the Uniform Grain Storage Agreement which has been executed by the warehouseman.

10. Section 1421.8 is revised to read as follows:

§ 1421.8 Approved storage.

(a) *Farm Storage.* Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) which is determined by CCC to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

(b) *Warehouse Storage.* Approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State and county offices.

11. In § 1421.9 paragraphs (a), (e) through (i) are revised to read as follows:

§ 1421.9 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC with respect to a loan or purchase agreement must meet the provisions of this section and all other provisions of this part.

* * * * *

(e) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f) *Entries.* (1) Each warehouse receipt, or a supplemental certificate (in duplicate) which properly identifies the warehouse receipt, must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The date the grain was deposited or received;

(vi) The date to which storage has been paid or the storage start date;

(vii) Whether the grain was received by rail, truck or barge;

(viii) The amount per bushel or hundredweight of prepaid in or out charges;

(ix) The signature of the warehouse operator or the authorized agent; and

(x) For warehouses operating under a merged warehouse code agreement (KCFL–614), the location and county to which the producer delivered the grain.

(2) In addition to the information specified in paragraph (f)(1) of this section, the following information must be provided with respect to the specified commodity:

(i) Barley:

(A) Gross weight in pounds and net bushels;

(B) Class and subclass;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(ii) Corn:

(A) Kind of Corn;

(B) Gross weight in pounds, and net bushels;

(C) Class;

(D) Grade (including special grades);

(E) Test weight;

(F) Moisture;

(G) Broken corn and foreign material; and

(H) Any other grading factor when such factor (not test weight) determines the grade.

(iii) Oats:

(A) Net weight and bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture; and

(E) Any other grading factor when such factor (not test weight) determines the grade.

(iv) Peanuts: Any information required of a warehouseman in accordance with Part 1446 of this chapter.

(v) Rice:

(A) Grade;

(B) Net weight and net hundredweight;

(C) Class;

(D) Grading factors;

(E) Milling yield;

(F) Moisture; and

(G) If the rice is stored commingled.

(vi) Rye:

(A) Gross weight and net bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture;

(E) Dockage; and

(F) Any other grading factor when such factor (not test weight) determines the grade.

(vii) Sorghum:

(A) Gross weight in pounds and net weight in hundredweight;

(B) Class;

(C) Grade;

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(viii) Soybeans:

(A) Net weight and bushels;

(B) Gross weight and bushels;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Percentage of foreign material; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(ix) Wheat:
(A) Gross weight and net bushels;
(B) Class and Subclass;
(C) Grade;
(D) Test weight;
(E) Moisture;
(F) Dockage;
(G) Protein content; and
(H) Any other grading factor when such factor (not test weight) determines the grade.

(g) *Warehouse recepts showing "Infested", excess moisture, or both.* If a warehouse receipt indicates that the commodity tendered for price support grades "Infested" or contains excess moisture, or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to receive price support. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "Infested" and the commodity has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iii) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending. Such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(A) Barley: 14.5 percent;
(B) Corn: 15.5 percent;
(C) Oats: 14.0 percent;
(D) Rye: 14.0 percent;
(E) Sorghum: 14.0 percent;
(F) Soybeans: 14.0 percent;
(G) Wheat: 13.5 percent; and
(H) Rice: 14.0 percent;

(h) *Liens* (1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouseman against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts which are stored in an approved warehouse which is operating in accordance with a Uniform Grain Storage Agreement ("UGSA") or a Uniform Rice Storage Agreement ("URSA") may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouseman be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) *Freight certificate requirements.* Warehouse receipts representing commodities which have been shipped by rail or by barge, utilizing combinatior barge-rail freight rates which are published and on file with the Interstate Commerce Commission, from a country shipping point to a normal trade channel market or to a storage point and stored in transit to a normal trade channel market must be accompanied by supplemental certificates. Such certificates must be representative as to origin and date of movement of the commodity and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line hauling. Such certifications shall be made and signed by the warehouseman on a form approved by CCC.

§ 1421.11 [Removed]

§ 1421.10 [Redesignated as § 1421.11]

12. Section 1421.11 is removed and current § 1421.10 is redesignated as §1421.11.

13. A new § 1421.10 is added to read as follows:

§ 1421.10 Warehouse charges.

(a) *Approved handling and storage rates.* CCC-approved handling and storage rates that may be deducted from loan and purchase proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted that:

(1) Storage charges through the maturity or expiration date have been prepaid; or

(2) The producer has arranged with the warehouseman for the payment of storage charges through the maturity or expiration date and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the commodity represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity or expiration date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt.

(b) *Storage costs.* The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

14. Section 1421.12 is revised to read as follows:

§ 1421.12 Fees, charges, and interest.

(a) *Loan service fees.* A producer shall pay a nonrefundable loan service fee of:

(1) $10 for each farm-stored loan that is disbursed and $1 for each bin in excess of one bin; and

(2) $6 for each warehouse-stored loan that is disbursed and $1 for each warehouse receipt in excess of one receipt that is submitted to CCC.

(b) *Delivery charges.* (1) A delivery charge shall be paid by a producer with respect to all commodities delivered to CCC at the following rates:

(i) One-half cent per bushel with respect to commodities handled on a bushel basis,

(ii) One cent per hundredweight with respect to commodities handled on a hundredweight basis;

(iii) 20 cents per each whole short ton with respect to peanuts.

(2) Delivery charges shall be paid at the time of settlement with respect to:

(i) Farm-stored loans;

(ii) Warehouse-stored loans; and

(iii) Purchase agreements.

With respect to warehouse-stored loans, delivery charges shall be deducted from the loan proceeds.

(c) *Interest.* Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been

repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

15. Sections 1421.16 (a), (b), and (d) are revised to read as follows:

§ 1421.16 Liability of the producer.

(a) *Fraud related to loans and unauthorized disposition of loan collateral.* (1) If a producer:

(i) Makes any fraudulent representation in obtaining, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan;

(B) Any additional amounts paid by CCC with respect to the loan;

(C) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts. The payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral, the value of such collateral shall be determined by CCC on the following basis:

(i) With respect to farm-stored loans, the lower of:

(A) The market value of the commodity, as determined by CCC, as of the date of delivery to, or removal by, CCC; or

(B) The loan settlement value of the commodity.

(ii) With respect to warehouse-stored loans, the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(iii) Notwithstanding the provisions of paragraphs (a)(2) (i) and (ii) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b) *Fraud relating to purchases.* (1) If a producer makes any fraudulent representation with respect to obtaining a purchase agreement or delivery of a commodity in accordance with such an agreement, the producer shall be liable for:

(i) The purchase amount paid to the producer by CCC;

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation; and

(iii) Interest on such amounts. The payment of such amounts may not be satisfied by the delivery, in accordance with such an agreement, of commodities to CCC with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation, the value of the commodity shall be the lowest of the following, as determined by CCC:

(i) The market value of the commodity, as determined by CCC, at the close of the market on the date of delivery to CCC;

(ii) The sales price of the commodity less any costs incurred by CCC if the commodity is sold by CCC in order to determine the market value of the commodity; or

(iii) The basic support rate applicable to the commodity.

* * * * *

(d) *Overdisbursement.* If the amount disbursed under a loan or purchase agreement, or in settlement thereof, exceeds the amount authorized by this Part, the producer shall be liable for repayment of such excess, plus interest.

* * * * *

16. Section 1421.17 is amended by revising the heading; revising the introductory text of paragraph (a)(2); adding a new sentence to paragraph (b); and adding a new paragraph (j) to read as follows:

§ 1421.17 Farm-stored loans.

(a) *Quantity for loan.* (1) * * *

(2) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan. With respect to ear corn, the loan percentage may not exceed 90 percent. With respect to all other commodities, the State committee may establish a loan percentage, which does not exceed a percentage established by CCC, each year for each commodity on a Statewide basis or for specified areas within the State. The factors to be considered by the State committee in determining loan percentages shall include but are not limited to:

* * * * *

(b) * * * Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(j) *Quantity delivered.* The quantity of a commodity acquired by CCC in accordance with a farm-stored loan shall be determined on the basis of the weight of the commodity at the time of delivery to CCC.

* * * * *

§ 1421.20 [Removed]

§ 1421.16 [Redesignated as § 1421.20]

17. Section 1421.20 is removed and current § 1421.16 is redesignated as § 1421.20.

18. A new § 1421.18 is added to read as follows:

§ 1421.18 Warehouse-stored loans.

(a) *Quantity for loan.* The quantity of a commodity which may be pledged as collateral for a loan shall be the quantity delivered to, or acquired by, CCC at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) *Grade requirements.* (1) In order to be eligible to be pledged as collateral for a loan, the commodity must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley may grade "Sample Grade" on the factors of test weight or damaged kernels (total), except for heat damage exceeding 3 percent or both; and

(ii) The barley may have the following special grade designations: "Bright"; "Stained"; "Garlicky"; and, in Alaska only, "Tough";

(iii) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iv) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Bleached.

(C) Ergoty.

(D) Smutty.

(3)(i) Corn must grade No. 3 or better except that:

(A) The corn may grade No. 4, No. 5, or "Sample Grade" on either the factors of test weight or damaged kernels (total) or both; and

(B) The corn may have the following special grade designations: "Flint", "Flint and dent" or "Waxy";

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

((4)(1) Oats must grade No. 3 or better, except that:

(A) The oats grade No. 4 or "Sample Grade" on the factors of test weight or because of being badly stained or materially weathered or both; and

(B) The oats may have the special grade designation "Garlicky";

(ii) The oats must not grade "Smutty"; "Ergoty"; "Bleached"; "Thin"; "Tough" or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better, except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3, No. 4 or "Sample Grade" on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light Garlicky"; and;

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with §1421.9.

(7)(i) Sorghum must grade No. 4 or better except that:

(A) The sorghum may grade "Sample Grade" on the factors of test weight and or damaged kernels (total); and

(B) The sorghum may have the special grade designation of "Smutty"; and

(ii) The sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better except that the soybeans may grade "Sample Grade" on any or all of the following factors if all other eligibility requirements are met:

(A) Test weight;

(B) Damaged Kernels (total);

(C) Foreign material;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent; and

(iii) The soybeans may not grade "Garlicky".

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(9)(i) Wheat must grade No. 5 or better, except that the wheat may grade "Sample Grade" on the factors of test weight or damaged kernels (total) or both;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat may have the special grade designations "Garlicky", "Smutty", or "Light Smutty".

(iv) The wheat must not grade "Ergoty", or "Treated"; and

(v) The wheat must not grade "Infested" or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

19. Sections 1421.19 (a) and (b) are revised to read as follows:

§ 1421.19 Liquidation of loans.

(a) *General.* If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral. With respect to farm-stored loans, the producer shall deliver the collateral for such loan, or other eligible commodities of the same kind, in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of the larger of:

(1) 110 percent of the quantity pledged as collateral for such a loan; or

(2) A sufficient quantity having a settlement value equal to the loan amount.

(b) *Delivery by the producer.* If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC-691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with Part 1403 of this chapter.

* * * * *

20. In newly redesignated § 1421.20 in paragraph (a)(1) the reference to "§ 1421.51(b)" is revised to read "§ 1421.4(i)" and paragraph (c)(3) is revised to read as follows:

§ 1421.20 Release of the commodity under loan.

* * * * *

(c) * * *

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC: (i) The principal amount of the loan, plus interest and applicable charges, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with §§ 1421.733 and 1421.753. The maturity date of the new warehouse storage loan shall be the maturity date applicable to the original warehouse storage loan.

* * * * *

21. Section 1421.21(a) is revised to read as follows:

§ 1421.21 Purchase agreements.

(a) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not pledged as collateral for a price support loan. A producer who has executed a price support purchase agreement may execute a price support loan with respect to the same commodities prior to the final loan availability date. In such event, the loan shall have a maturity date which is last day of the ninth calendar month following the month in which the loan application is made. CCC will not accept delivery of any quantity in excess of 110 percent of the quantity stated in the purchase agreement. Settlement of the quantity not in excess of 110 percent of the quantity stated in the purchase agreement shall be made in accordance with § 1421.22.

* * * * *

22. Section 1421.22 is revised to read as follows:

§ 1421.22 Settlement.

(a) *General.* The settlement of loans and purchase agreements shall be made by CCC on the basis of the grade, quality, and quantity of the commodity delivered to CCC by the producer.

(b) *Commodities stored in approved warehouses.* Settlements made by CCC with respect to eligible commodities which are acquired by CCC and which

are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c) *Commodities stored in facilities other than approved warehouses.* (1) All eligible commodities which are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to barley, corn, oats, rye, sorghum, soybeans, and wheat which are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut support rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, price support shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with Part 729 of this title.

(iv) The support rate for additional peanuts shall be used for all peanuts which do not grade "Segregation 1" at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the undermarketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates. If rice is pledged as collateral for a farm-stored loan in an area where a location differential is in effect and such rice is delivered to CCC in an area where a differential is not applicable, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the area in which delivery is made.

* * * * *

23. Section 1421.24 is revised to read as follows:

§ 1421.24 Protein determinations.

(a) *Protein content determinations for warehouse-stored wheat.* With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC which is stored in an approved warehouse producers must obtain official protein content determinations or protein content determinations arrived at by mutual agreement between the producer and the warehouseman. Costs of such determinations shall not be paid by CCC.

(b) *Protein content determinations for farm-stored wheat.* A producer may request a CCC determination of the protein content of wheat pledged as collateral for a farm-stored loan. Such a request must be made at the county office and the producer must pay a fee as determined by CCC, for each bin which is tested. For purposes of loan disbursements, the basic support rate shall be adjusted to reflect the protein content. However, settlement of the loan shall be made by CCC on the basis of the protein content of the wheat at the time of delivery to CCC.

§ 1421.25 [Redesignated as § 1421.31]

24. Section 1421.25 is redesignated as § 1421.31.

25. A new § 1421.25 is added to read as follows:

§ 1421.25 Rice marketing loans and marketing certificates.

(a) *Marketing loans.* A producer may repay a loan at a level that is the lesser of:

(1) The loan level determined for a crop; or

(2) The higher of:

(i) The loan level determined for such crop multiplied by 60 percent for the 1988 crop; and 70 percent for the 1989 and 1990 crops; or

(ii) The prevailing world market price, as determined by CCC. As a condition of permitting a producer to repay such a loan, CCC may require the producer to purchase CCC commodity certificates equal in value to an amount that does not exceed one-half the difference between the principal amount of the loan and the loan repayment amount.

(b) *Commodity certificates.* If CCC determines that, at anytime between August 1, 1986 and July 31, 1991, the world market price of a class of rice, as determined by CCC, is below the current loan repayment rate for a class of rice, CCC shall issue commodity certificates to persons who have entered into an agreement with CCC with respect to the issuance and exchange of such certificates. The value of such certificates shall be based upon the difference between:

(1) The loan repayment rate for such class of rice; and

(2) The prevailing world market price for such class of rice, as determined by CCC.

(c) *Payments.* Payments made in accordance with this section shall be made in a manner determined by CCC.

§§ 1421.26 and 1421.28 [Removed]

26. Sections 1421.26 and 1421.28 are removed.

§§ 1421.27 and 1421.29 [Redesignated as §§ 1421.29 and 1421.32 Respectively]

27. Sections 1421.27 and 1421.29 are redesignated as §§ 1421.29 and 1421.32, respectively.

§§ 1421.287, 1421.289 and 1421.290 [Redesignated as §§ 1421.26, 1421.27 and 1421.28 Respectively]

28. Sections 1421.287, 1421.289 and 1421.290 are redesignated as §§ 1421.26, 1421.27 and 1421.28, respectively.

29. Redesignated § 1421.27(a)(2) is revised to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts under loan.

(a) * * *

(2) For edible export, at the sales price determined and announced by CCC.

* * * * *

§ 1421.28 [Amended]

30. Redesignated § 1421.28(d) is amended by revising the reference "§ 1421.289" to read "§ 1421.27".

§ 1421.322 [Amended]

31. In § 1421.322, the reference "7 CFR 1421.302" is revised to read "this Part".

32. The following subparts set forth in Part 1421 are removed:

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Barley

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Corn

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Sorghum

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Oats

Subpart—1987 and Subsequent Crops Peanut Farm-stored Loan and Purchase Program

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Rice

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Rye

Subpart—Loan and Purchase Program for the 1987 and Subsequent Crops Soybeans

Subpart—Loan and Purchase Program for 1987 and Subsequent Crops Wheat

PART 713—REDESIGNATED AS PART 1413

33. Title 7 of the Code of Federal Regulations is amended by redesignating Part 713 consisting of §§ 713.1–713.157 as Part 1413—Wheat, Feed Grains, Upland and Extra Long Staple Cotton, and Rice Production Adjustment Programs for the 1988 and Subsequent Crop Years consisting of §§ 1413.1–1413.157.

34. The table of contents and authority citation for 7 CFR 713.1 through 713.157 are transferred to Part 1413. The section numbers 713.1 through 713.157 in the table of contents are redesignated as §§ 1413.1 through 1413.157, respectively.

PART 770—REDESIGNATED AS PART 1470

35. Title 7 of the Code of Federal Regulations is amended by redesignating Part 770 consisting of §§ 770.1 through 770.7 as Part 1470 Commodity Certificates, in Kind Payments, and Other Forms of Payments consisting of §§ 1470.1–1470.7.

36. The table of contents and authority citation for 7 CFR 770.1 through 770.7 are transferred to Part 1470. The section numbers §§ 770.1 through 770.7 in the table of contents are redesignated as §§ 1470.1 through 1470.7, respectively.

Signed at Washington, DC on May 13, 1988.

Milt Hertz,

Executive Vice President, Commodity Credit Corporation, Administrator, Agricultural Stabilization and Conservation Service.

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Agricultural Marketing Service

7 CFR Part 998

Marketing Agreement Regulating the Quality of Domestically Produced Peanuts and Implementing Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule contains the provisions of the peanut marketing agreement which became effective on July 12, 1965, and the incoming and outgoing quality and indemnification regulations established under that program. Although the marketing agreement and regulations have been published in the Federal Register, they have not been codified in the Code of Federal Regulations. The purpose of this action is to affect and codification.

EFFECTIVE DATE: These regulations are being added to the Code of Federal Regulations June 3, 1988. The provisions of the peanut agreement hereinafter codified as 7 CFR Part 998 have been effective since July 12, 1965, (30 FR 9402, July 28, 1965). The implementing regulations which apply to 1987 crop peanuts have been effective since July 1, 1987.

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) 447-5697.

SUPPLEMENTARY INFORMATION: The purpose of this action is to publish in the Federal Register a currently effective Marketing Agreement Regulating the Quality of Domestically Produced Peanuts and its Implementing Regulations so that the marketing agreement and regulations will be codified in the Code of Federal Regulations as 7 CFR Part 998. The marketing agreement and implementing regulations that are to be codified were issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

Because this action is administrative in nature relating to internal agency management and procedure to accomplish codification of a currently effective marketing agreement and its regulations, the provisions of Executive Order 12291 and Departmental Regulation 1512–1 do not apply. For the same reasons, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) do not apply.

This action publishes the provisions of the peanut marketing agreement which became effective on July 12, 1965, and the incoming and outgoing quality and indemnification regulations established under that program.

The "Marketing Agreement Regulating the Quality of Domestically Produced Peanuts" was published in the proposed rulemaking section of the Federal Register on May 12, 1965, (30 FR 6523). On July 28, 1965, a notice was published in the Federal Register that the agreement became effective on July 12, 1965 (30 FR 9402). The agreement has, and regulations which have undergone numerous amendments have, never been codified in the Code of Federal Regulations. The purpose of this action is to affect such codification.

This action imposes no change in regulatory requirements including record keeping and reporting requirements. The information collection requirements of the marketing agreement and regulations have been approved previously by the Office of Management and Budget under OMB Control No. 0581–0067. Because this action is administrative in nature relating to internal agency management and procedure, the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply and because the marketing agreement and regulations are currently in effect good cause is found for not postponing the effective date of this action until 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 998

Market agreement, Peanuts.

1. For the reasons set forth in the preamble, 7 CFR Part 998 is added to read as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

Definitions

Sec.
998.1 Secretary.
998.2 Act.
998.3 Person.
998.4 Area.
998.5 Peanuts.
998.6 Producer.
998.7 Handle.
998.8 Handler.
998.9 Crop year.
998.10 Production areas.
998.11 Area association.

Peanut Administrative Committee

998.15 Establishment and membership.
998.16 Eligibility.
998.17 Term of office.
998.18 Initial committee.
998.19 Nomination.
998.20 Selection.
998.21 Failure to nominate.
998.22 Qualify by acceptance.
998.23 Alternate members.
998.24 Vacancies.
998.25 Compensation and expenses.
998.26 Procedure.
998.27 Powers.
998.28 Duties.

Marketing Policy

998.30 Marketing policy.

Quality Regulation

998.31 Incoming regulation.
998.32 Outgoing regulation.
998.33 Inspection, certification and identification.
998.34 Modification.
998.35 Above parity situations.
998.36 Indemnification.

Reports, Books and Records

998.40 Confidential information.
998.41 Reports of acquisitions and shipments.
998.42 Other reports.
998.43 Records.
998.44 Verification of reports.

Expenses and Assessments

998.47 Expenses.
998.48 Assessments.

Miscellaneous Provisions

998.50 Rights of the Secretary.
998.51 Personal liability.
998.52 Separability.
998.53 Derogation.
998.54 Duration of immunities.
998.55 Agents.
998.56 Effective time.
998.57 Suspension or termination.
998.58 Procedure upon termination.
998.59 Effect of termination or amendment.
998.60 Counterparts.
998.61 Additional parties.

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

Definitions

§ 998.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

§ 998.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 998.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 998.4 Area.

"Area" means all States with commercial production of peanuts and includes the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Tennessee, Missouri, Louisiana, Oklahoma, Texas, New Mexico, Arizona, and California.

§ 998.5 Peanuts.

"Peanuts" means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled other than those marketed by the producer in green form for consumption as boiled peanuts.

(a) *Farmers Stock.* "Farmers stock peanuts" means picked and threshed peanuts which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the form in which customarily marketed by producers.

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers stock peanuts with more than 2 percent but not more than 4 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers stock peanuts with more than 4 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(e) The definitions set forth in paragraphs (b), (c), and (d) of this section may be modified by the Secretary pursuant to § 998.34.

§ 998.6 Producer.

"Producer" means any person engaged within the area in a proprietary capacity in the production of peanuts for sale.

§ 998.7 Handle.

"Handle" means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided,* That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further,* That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 998.8 Handler.

"Handler" means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling, and who is a party to this agreement.

§ 998.9 Crop year.

"Crop year" is synonymous with "fiscal year" and means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year.

§ 998.10 Production areas.

"Production areas" mean (a) The Southeastern Area consisting of the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(b) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(c) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

§ 998.11 Area association.

"Area association" means for the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers Association, Gorman, Texas; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Virginia.

Peanut Administrative Committee

§ 998.15 Establishment and membership.

A Peanut Administrative Committee (hereinafter referred to as committee) is hereby established to administer the terms and provisions of this agreement. Such committee shall consist of 18 members of whom 9 shall represent producers and 9 shall represent handlers. The producer representation shall be 3 for the Southeastern area, 3 for the Southwestern area, and 3 for the Virginia-Carolina area of which one of the 3 in each production area shall represent the respective area association. The handler representation shall also be 3 for each of the designated areas. For each member there shall be an alternate member.

§ 998.16 Eligibility.

Each producer member of the committee and alternate member, shall be, at the time of his selection and during his term of office, a producer, or an officer or employee of an area association, in the area for which selected and shall cease to be a member or alternate upon engaging in the handling of peanuts either in a proprietary capacity or as a director, officer, or employee of other than a cooperative association. Each handler member of the committee, and his alternate, shall be, at the time of his selection, a handler or an officer or employee of a handler in the area for which selected and shall throughout his term of office so continue to be a handler.

§ 998.17 Term of office.

Members and alternate members of the committee shall serve for terms of 3 years ending on April 30 but initial members and alternates shall be selected for terms of 1, 2, or 3 years so that one-third of the producer and handler representatives in each area may be replaced each year. Each member and alternate member shall continue to serve until his successor is selected and has qualified.

§ 998.18 Initial committee.

The initial members of the committee and their respective alternates shall be as follows:

Southeastern area:

Producers	Member	Alternate member	Term of office years
Area Assn	D.H. Harden	W.G. Miller	3
At Large	James E. Mobley	T. Lewis Knox	2
At Large	Emmett Reynolds	Billy Newberry	1
Handlers	Member	Alternate member	
	Don W. Sands	Tom Chandler	3
	James Anderson	J.B. Roberts	2
	R.C. Singletary, Jr.	Robert Pender	1

Southwestern area:

Producers	Member	Alternate member	
Area Assn	Ross Wilson	B.D. Green	3
At Large	D.B. Warren	E.A. Walker	2
At Large	Barton Scott	Jesse Leach	1
Handlers	Member	Alternate member	
	John Haskins	Pat Cagle	3
	Melvin Shell	Ellis L. Ganey	2
	John Burroughs	R.L. Borden	1

Virginia-Carolina area:

Producers	Member	Alternate member	
Area Assn	S. Womack Lee	J.F Turner, Sr.	3
At Large	Joe S. Sugg	Minton Beach, Jr.	2
At Large	Wm. V Rawlings	G.B. Ligon	1
Handlers	Member	Alternate member	
	H.R. Birdsong	W.J. Spain, Jr.	3
	T.J. White	W.P. Woodley	2
	B.E. Parker	William D. Shaw	1

§ 998.19 Nomination.

Producers and handlers may nominate their successor representatives to those named in § 998.18 at meetings held in each area except that each area association representative shall be nominated by the association. The committee shall hold and shall give reasonable publicity to nomination meetings and may use the respective area associations to convene meetings of the producers. Only persons eligible to serve shall be eligible to vote. Each producer and each handler shall have but one vote, but a handler may vote in each production area in which he is a handler and if engaged in peanut production, may vote in his capacity as a producer. The person receiving the largest number of the votes cast for a position shall be the nominee. All nominations shall be certified by the committee to the Secretary no later than

April 5 preceding the commencement of the term of office.

§ 998.20 Selection.

The Secretary shall select successor producer and handler members and alternate members of the committee in the numbers and with the qualifications specified in this agreement. Such selections may be made from the nominations certified by the committee or from other eligible producers and handlers.

§ 998.21 Failure to nominate.

In the event a nominee for any member or alternate member position is not certified pursuant to and within the time specified, the Secretary may select an eligible person to fill such position without regard to nomination.

§ 998.22 Qualify by acceptance.

Each person selected by the Secretary as a member or as an alternate member shall, prior to serving, qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

§ 998.23 Alternate members.

An alternate for a member shall act in the place and stead of such member:

(a) During his absence, or

(b) In the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

§ 998.24 Vacancies.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member or alternate, or any need to select a successor through failure of any person selected as a member or alternate member to qualify, and which is not recognized by the committee certifying to the Secretary a new nominee within 40 calendar days, may be filled pursuant to § 998.21.

§ 998.25 Compensation and expenses.

The members of the committee, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses, actual or per diem as approved by the committee.

§ 998.26 Procedure.

All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present except that a change of a quality regulation shall require approval of 75 percent of the members. Meetings, or portions of meetings, concerned with marketing policy or quality regulation shall be open to all members of the peanut industry. All votes in an assembled meeting shall be cast in person and a quorum must be present for a valid decision. A quorum shall consist of not less than 50 percent of the producer members and 50 percent of the handler members. The committee may vote by mail or telegram upon due notice to all members, but any proposition so voted upon first shall be explained accurately, fully, and identically by mail or telegram, to all such members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption. Failure of any member, or alternate acting for a member, to vote within a prescribed time shall be held to be a dissenting vote.

§ 998.27 Powers.

The committee shall have the following powers:

(a) To administer the agreement in accordance with its terms and provisions;

(b) To receive, investigate, and report to the Secretary, complaints of violations of this agreement; and

(c) To recommend to the Secretary amendments to this agreement.

§ 998.28 Duties.

The committee shall have the following duties:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions and these shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and marketing of peanuts;

(d) To submit to the Secretary such available information with respect to peanuts as he may request and such other information as the committee may deem desirable and pertinent;

(e) To select from among its members a chairman and other officers and to adopt such by-laws for the conduct of its business as it may deem advisable;

(f) To appoint or employ such persons as it may deem necessary and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by a certified public accountant at least once each crop year and at such other times as the committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(h) To prepare and submit to the Secretary quarterly statements of the financial operations of the committee and to make such statements together with the minutes of the meetings of said committee available for inspection at the offices of the committee by producers and handlers;

(i) To give the Secretary the same notice of meetings of the committee as is given to members;

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this agreement; and

(k) To establish with the approval of the Secretary such rules and regulations as are necessary or incidental to administration of this agreement, as are consistent with its provisions, and as would tend to accomplish the purposes of this agreement and the act.

Marketing Policy

§ 998.30 Marketing policy.

Prior to May 31, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting and storage conditions, probable quality of crop, grading and treatment methods, inspection capability, demand for peanuts in domestic and foreign markets, the basis of handler indemnification, the probable assessable tonnage for the purposes of § 48 and such other factors as may have a bearing on the peanut quality regulation or the administration of this agreement. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

Quality Regulation

§ 998.31 Incoming regulation.

No handler shall receive or acquire peanuts, either from a producer or other person, unless such peanuts were determined pursuant to § 998.33 to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than

Segregation 1: *Provided,* That a handler may.

(a) Receive or acquire and deliver for seed purposes farmers stock peanuts with not more than 3 percent damaged kernels nor more than 10 percent moisture if such peanuts were produced under the auspices of a State agency which regulates or controls the production of seed peanuts;

(b) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from handlers subject to this agreement, or from buyers who have purchased such peanuts from such handlers or from CCC, if the lot has been certified as meeting the requirements of § 998.32(a) and the identity is maintained;

(c) Perform services for an area association pursuant to a peanut receiving and warehouse contract; and

(d) If a crusher, acquire peanuts of a lower quality than Segregation 1 as oil stock upon such conditions as the committee, with the approval of the Secretary, may prescribe.

Segregation 2 peanuts which are wholesome relative to mold damage may be acquired from peanuts held by CCC or an area association when released by the Secretary as needed to fill demand. In the situation of § 998.35, the Secretary may authorize handlers to acquire Segregation 2 peanuts from producers or intermediaries. The acquisition of loose shelled kernels or their removal from farmers stock peanuts shall be in accordance with such procedures as the committee, with the approval of the Secretary, may establish.

§ 998.32 Outgoing regulation.

(a) No handler shall dispose of for human consumption, peanuts which fail to meet such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness as the committee, with the approval of the Secretary, may specify including the tolerance for moldy peanuts, time in storage, or other pertinent factors. No inspection certificate issued pursuant to § 998.33 shall be effective if unacceptable to the committee or for more than such period of time as the committee, with the approval of the Secretary, may prescribe. Peanuts which fail to meet the requirements specified pursuant to this section shall be disposed of by delivery to the Commodity Credit Corporation or in such manner as may be prescribed by the committee with the approval of the Secretary.

(b) Notwithstanding the restrictions contained in this section, and handler may transfer peanuts from one plant owned by him to another plant owned by him or to commercial storage without having an inspection made as provided for in § 998.33. No such transfers shall be made except in accordance with such procedures as the committee, with the approval of the Secretary, may prescribe for movement within each production area, to another production area or to points outside thereof.

§ 998.33 Inspection, certification and identification.

Each handler shall, at his own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether they meet the applicable grade requirements effective pursuant to this agreement and shall comply with such identification requirements as the committee, with the approval of the Secretary, may prescribe. Such handler shall obtain a certificate that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the committee. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary.

§ 998.34 Modification.

The requirements of §§ 998.31 and 998.32 and definitions set forth in § 998.5, (b), (c), and (d) may be modified by the Secretary, upon recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the objectives of this agreement.

§ 998.35 Above parity situations.

Minimum standards established under §§ 998.31 and 998.32, the grading and inspection requirements, and the provisions of this agreement relating to administration and indemnification shall continue in effect irrespective of whether or not the estimated season average price for peanuts is in excess of the parity level specified in section 2(1) of the Act.

The committee shall, upon such terms and conditions as it may establish with the approval of the Secertary, indemnify any handler, to the extent specified, for losses incurred by him on peanuts which have been milled for sale for human consumption and which meet the applicable grade and other requirements but which are determined by the committee or the U.S. Food and Drug Administration to be unsuitable for human consumption because of aflatoxin including such peanuts returned, resold or rejected to a handler by a purchaser. Any peanuts for which the handler is indemnified pursuant to this paragraph shall be delivered to the committee or disposed of as the committee may direct. Funds for such indemnification shall be obtained pursuant to § 998.48. The period of indemnification on any crop may extend to December 31 of the calendar year following the year in which the crop was produced.

Reports, Books and Records

§ 998.40 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such information to no person except the Secretary. Nothwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this agreement.

§ 998.41 Reports of acquisitions and shipments.

Each handler shall file such reports of his acquisitions and shipments of peanuts, as may be requested by the committee.

§ 998.42 Other reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this agreement.

§ 998.43 Records.

Each handler shall maintain such records of peanuts received, held and disposed of by him, as will substantiate any required reports and will show performance under this agreement. Such records shall be retained for at least 2 years beyond the crop year of their applicability.

§ 998.44 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this agreement, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours,

shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed of by him.

Expenses and Assessments

§ 998.47 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this agreement, determine to be appropriate.

§ 998.48 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to peanuts received by him, including his own production, his pro rata share of all expenses, indemnification and other, which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired other than those peanuts described in § 998.31 (c) and (d). During a crop year the Secretary may not increase the rate of assessment to cover a deficit in the indemnification fund but may assess for a deficit in a subsequent year. An assessment rate may be increased to cover a deficit in the administrative fund.

(b) In order to provide funds to carry out the functions of the committee, the committee may borrow money or may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) *Indemnification reserve.* The committee, with the approval of the Secretary, may establish and maintain during one or more crop years a monetary reserve in an amount approximating anticipated expenses for indemnification pursuant to § 998.36.

(d) *Refunds.* Administrative funds held by the committee at the conclusion of the crop year in excess of the crop year's expenses, other than indemnification funds, may be used to defray expenses for no more than the ensuing four months, and thereafter within a reasonable time the committee shall credit the aforesaid administrative excess to handlers who contributed to such excess: *Provided,* That the excess due any handler shall be applied, in whole or in part, by the committee to any outstanding obligation due the committee from such handler. Should any handler discontinue handling peanuts, such excess shall be refunded to him. A handler's share of such excess funds shall be the amount of such assessments he paid in excess of his actual pro rata share of the administrative expenses of the committee. Upon termination of this agreement any indemnification money in possession of the committee shall be turned over to any successor committee or disposed of, with the approval of the Secretary, for projects of benefit to the peanut industry and any residual together with any administrative money shall be distributed in such manner as the Secretary may direct: *Provided,* That, to the extent practicable, such residual funds shall be returned pro rata to the persons from whom collected.

Miscellaneous Provisions

§ 998.50 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 998.51 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 998.52 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 998.53 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 998.54 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 998.55 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this agreement.

§ 998.56 Effective time.

The provisions of this agreement, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 998.57.

§ 998.57 Suspension or termination.

(a) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this agreement, whenever he finds that such provisions do not tend to effectuate the declared policy of the act. Moreover, if the provisions of the CCC price support program relating to purchases from shellers are discontinued, or change appreciably, consideration shall be given to termination of this agreement.

(b) *Referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of peanuts who during the crop year have been engaged in the production of peanuts for market: *Provided,* That such majority have during such period produced for market more than 50 percent of the volume of such peanuts produced for market within the area, but such termination shall be effective only if announced on or before June 1 of the then current crop year.

(c) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the act authorizing them cease to be in effect.

§ 998.58 Procedure upon termination.

Upon the termination of this agreement, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this agreement. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ 998.59 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this agreement or any regulation issued thereunder, or

(b) Release or extinguish any violation of this agreement or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

§ 998.60 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 998.61 Additional parties.

After the effective date of this agreement, any handler may become a party hereto if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and such party has complied with assessment obligations and the quality regulations applicable to the current crop. The benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting part.

2. The center heading "IMPLEMENTING REGULATIONS" is added to Part 998 after § 998.61 along with §§ 998.100, 998.200, and 998.300. The center heading and three sections read as follows:

Implementing Regulations

Sec.

998.100 Incoming quality regulation—1987 crop peanuts.

998.200 Outgoing quality regulation—1987 crop peanuts.

998.300 Terms and conditions of indemnification—1987 crop peanuts.

Implementing Regulations

§ 998.100 Incoming quality regulation—1987 crop peanuts.

The following modify § 998.5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) *Modification of § 998.5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of § 998.5 of the peanut marketing agreement are modified for the purposes of this section as to farmers' stock peanuts to read respectively as follows:

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers' stock peanuts with visible *Aspergillus flavus.*

(b) *Moisture and foreign material.*— (1) *Moisture.* Except as provided under paragraph (e) *Seed peanuts,* and for field dried farmers' stock peanuts produced in the Southwestern area which are delivered to the buying station in bags, no handler shall receive or acquire peanuts containing more than 10.00 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.00 percent moisture prior to storing or milling, and Southwestern-area-field-dried peanuts delivered to the buying station in bags may contain up to 10.49 percent moisture. On farmers' stock, such moisture determinations shall be rounded to the nearest whole number, except, that when the moisture determination is 10.01 percent to 10.49 percent, the determinations shall be recorded the same as is prescribed for shelled peanuts. On shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers' stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers' stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers' stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* (1) Handlers may separate from the loose shelled kernels received with farmers' stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{15}/_{64}$ x 1 inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided,* That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the Outgoing Quality Regulation (§ 998.200). If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

(2) Each handler shall be required to submit to the Committee a flow chart for each plant operation diagraming the

procedures and equipment used in the removal of loose shelled kernels and in the processing of splits. Upon any subsequent changes in such flow, procedures, or equipment, the handler shall submit to the Committee a revised flow chart reflecting those changes.

(e) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers' stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus*, and, in addition, the following moisture content, as applicable:

(1) For such seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and

(2) For seed peanuts produced in the Southwestern area, they may contain up to 10.49 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers' stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee as requested the weight of each lot of farmers' stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers' stock) seed peanuts or from another sheller or producer who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets, and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation (§ 998.200).

(f) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of § 998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers' stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers' stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers' stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation (§ 998.200) which failed to meet the requirements for human consumption pursuant to paragraph (a) of the Outgoing Quality Regulation (§ 998.200): *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation (§ 998.200). Further disposition or commingling of such peanuts shall be only as provided in paragraph (l) of the Outgoing Quality Regulation. (§ 998.200). Handlers who acquire farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers' stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(g) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers' stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(h) *Farmers' stock storage and handling facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers' stock peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers' stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers' stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers' stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers' stock storage and handling facilities and farmers' stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(i) *Shelled peanuts.* Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Any lot of such peanuts must

be accompanied by a valid inspection certificate for grade factors, an aflatoxin assay certificate, and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation (§ 998.200).

(i) *Inedible quality shelled peanuts for disposition to animal feed.* Handlers may receive or acquire from other handlers, for further milling and/or processing and subsequent disposition for use as domestic animal feed, shelled peanuts that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Any lot of such peanuts received or acquired for such further disposition shall be positive lot identified and covered by a valid grade inspection certificate issued by a Federal or Federal-State Inspector. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts received or acquired pursuant to this paragraph shall be held, milled, and/or processed separate and apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided for in paragraph (m)(2) of the Outgoing Quality Regulation (§ 998.200).

§ 998.200 Outgoing quality regulation—1987 crop peanuts.

The following modify or are in addition to the peanut marketing agreement restrictions of § 998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this section, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than—

(1) A total of 1.50 percent unshelled peanuts and damaged kernels;

(2) A total of 2.50 percent unshelled peanuts and damaged kernels and minor defects except for "No. Two Virginia," which may not exceed 3.00 percent;

(3) 9.00 percent moisture; or

(4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade.

The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that in peanuts other than "No. Two Virginia" fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits." The term "fall through" as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph 9a) shall be as follows:

Type	Screen Openings		
	Split and Broken Kernels		Whole Kernels
Runners	17/64 inch round.	.....	14/64 × 3/4 inch slot.
Spanish and Valencia.	15/64 inch round.	.....	13/64 × 3/4 inch slot.
Virginia except "No. 2 Virginia".	17/64 inch round.	.....	14/64 × 1 inch slot.
"No. 2 Virginia".	.....	13/64 inch round only for split, broken and whole kernels.	

("No. Two Virginia" means Virginia type peanuts that meet requirements of U.S. No. 2 Virginia grade peanuts except for tolerances for: Damage or unshelled peanuts and minor defects; and sound peanuts and portions of peanuts which pass through the prescribed screen. Such tolerances shall be the same as those listed heretofore in this paragraph. Runners, Spanish, or Virginia "with splits" means shelled peanuts which do not contain more than 15 percent splits; for Spanish, 2.00 percent whole kernels which will pass through 15/64 × 3/4 inch slot screen; for Runners, 3.00 percent whole kernels which will pass through 16/64 × 3/4 inch slot screen; and for Virginias, 3.00 percent whole kernels which will pass through 15/64 × 1 inch slot screen; and otherwise meet specification of U.S. No. 1 grade).

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts.* Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1," "Sample #2," and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1–CD." Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground Subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB." Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at his expense. The cost of assay on Subsample 1–AB and a portion of the cost (specified by the Committee) of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB to the laboratory shall be for the account of the buyer. However, if the handler elects to pay for these costs, the handler shall charge the buyer the amount specified by the Committee when the handler invoices the peanuts and, if more than one buyer, on a pro rata basis. Any remaining costs of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB shall be for the account of the handler and shall be shown on the grade analysis certificate covering the lot. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler who shall promptly cause notice to be given to the buyer, of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose shelled kernels, fall through and pickouts.* (1) Loose shelled kernels which do not ride screens with the following slot openings: Runner—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{15}/_{64}$ x 1 inch; and fall through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph (g)(3) or paragraph (m) of this section, hereinafter. For the purpose of this regulation: The term "non-edible quality peanuts" described in this paragraph means loose shelled kernels, fall through, and pickouts; the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers' stock peanuts or those which fail to ride the screens prescribed in paragraph (d)(1) of the Incoming Quality Regulation (§ 998.100); the term "fall through" has the same meaning as in paragraph (a) of this section; and the term "pickouts" means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new bags or clean used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3)(i) In addition to disposition outlets specified in paragraph (g)(1) of this section, such peanuts (loose shelled kernels, fall through, and pickouts) may be disposed of, with prior approval by the Committee for each such disposition, for use in research projects performed by institutions which are supported or sponsored with State or Federal funds. Fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Each category of non-edible quality peanuts described in paragraph (g)(1) of this section and identified as prescribed in paragraph (g)(2) of this section may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this section or

they may be moved to another handler for such disposition. Sales or transfer of such peanuts, to exporters who are not handlers under the marketing agreement, shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(1) of this section to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) of this section which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing but may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (l)(2) of this section. Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) of this section are exported or crushed in commingle with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

(ii) Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Handlers or crushers may detoxify positive tested meal, have it retested, and if such meal is found negative as to aflatoxin content, it may be disposed of for feed use. Handlers may also move "restricted" meal to a licensed operator, approved by USDA, FDA, or other government agencies, for detoxification. Such meal may also be used for research purposes, subject to the approval of the Executive Subcommittee. However, loose shelled kernels, fall through, and pickouts and meal from such peanuts, in specifically identified lots not exceeding 200,000 pounds may be sampled by the Federal or Federal-State Inspection Service or by the Area Association if authorized by the Committee, and tested for aflatoxin in laboratories approved by the Committee or by a USDA laboratory, at handler's or crusher's expense, and if such meet Committee standards, the meal may be disposed of for feed use.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation (§ 998.100), a handler may transfer non-edible quality peanuts described in paragraph (g)(1) of this section to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts failing quality requirements.* (1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section. Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation (§ 998.100) shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched positive identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided,* That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Handlers who move such peanuts to a blancher, shall report to the Committee, on a form furnished by the Committee, movement of each such lot and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after, blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certification determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation (§ 998.200); *or* in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or a Committee approved exporter. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation (§ 998.200): To domestic crushing, to export to countries other than Canada and Mexico, provided they meet fragmented requirements, to crushers who are not handlers but are approved by the Committee, to other handlers for crushing or fragmenting and exportation, or to domestic animal feed use or to other handlers for such disposition, pursuant to paragraph (m) of the Outgoing Quality Regulation (§ 998.200). Sales or transfer of such peanuts to exporters who are handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Each lot of such peanuts shall have been positive lot identified as prescribed in paragraph (d) of this section. Handlers may dispose of such peanuts as "unrestricted": *Provided,* That each lot has been sampled and assayed for aflatoxin as specified in paragraph (c) of this section and

determined to be negative as to aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)(1) of this section. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted." Therefore, the disposition of such peanuts to export or domestic crushing shall be as "restricted." However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2) of this section. Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation (§ 998.200): *Provided*, That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and an aflatoxin assay certificate and must be positive lot identified. Handlers who move such peanuts to an approved remiller shall report to the Committee, on a form furnished by the Committee, the movement of each such lot. The title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions shall be bagged and red-tagged and disposed of to domestic crushing by the approved remiller or they may be returned to the handler for disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation (§ 998.200). Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers' stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation §998.100) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers' stock. Likewise, any such residuals received or acquired from a handler of non-handler, shall be held and milled separate and apart in the same manner. Residuals that meet requirements of the Outgoing Quality Regulation may be disposed of by sale to human consumption outlets or to another handler and any portion in positive identified lots not meeting such requirements: (a) May be handled and disposed of pursuant to the provisions of paragraph (h) of this section; or (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g) of this section.

(j) *Segregation 2 and 3 farmers' stock disposition.* (1) Handlers who have acquired Segregation 2 and 3 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation (§ 998.100) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and farmers' stock peanuts may be moved or disposed of in bags or bulk: To other handlers for shelling, fragmenting, or crushing, or to crushers who are not handlers but are approved by the Committee. Handlers may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags: To other handlers for fragmenting or crushing, or to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter the paragraph (l)(2) of this section for "restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (l)(1) of this section and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the Area Association and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingling and domestic crushing. All movement and disposition of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation (§ 998.100) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be moved or disposed of in bulk or bags: To other handlers for shelling, fragmenting, or crushing, or to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: To another handler for fragmenting or crushing; or to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in

paragraph (l)(1) of this section. Prior to exportation the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (l)(1) of this section. If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(k) *Segregation 1 farmers' stock disposition.* (1) In addition to milling (shelling, cleaning, etc.) Segregation 1 farmers' stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers' stock peanuts to export or to other handlers for such dispostion. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), of this section handlers may dispose of Segregation 1 farmers' stock peanuts in bags or bulk to other handlers for shelling, fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers' stock peanuts with Segregation 2 farmers' stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to others handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting, and disposition of such Segregation 1 farmers' stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing shall be milled and disposed of pursuant to paragraph (j)(2) of this section in lieu of the provisions specified in paragraphs (a), (b), (c), (d), (g), (h), and (i) of this section. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as prescribed by the Committee.

(l) *Handling commingling, and disposition of shelled peanuts not meeting quality requirements for human consumption.* (1) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "unrestricted".

(i) The entire mill production of shelled peanuts from Segregation 1 farmers' stock pursuant to paragraph (k)(2) of this section.

(ii) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers' stocks pursuant to paragraph (j)(2) of this section.

(iii) Positive lot identified lots of shelled "peanuts failing quality requirements" determined negative as to aflatoxin pursuant to paragraph (h)(3) of this section.

(iv) Positive lot identified lots of loose shelled kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraphs (g)(1), (2), and (3) of this section.

(v) Positive lot identified lots of loose shelled kernels, fall through and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g)(2), and (3) of this section.

(vi) Positive lot identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i) of this section.

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: With any other category of peanuts described in this paragraph, and with any category of "unrestricted" shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term "fragmented" means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish 15/64 x 3/4 inch slot; Runner 16/64 x 3/4 inch slot; and Virginia 15/64 x 1 inch slot. Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher: With any other category of peanuts described in this paragraph, and with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted disposition (crushing or export), such peanuts, before commingling and after commingling shall be kept separate and apart from all "restricted" peanuts. Shelling fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "restricted:"

(i) The entire mill production of shelled peanuts from Segregation 1 farmers' stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation (§ 998.200).

(ii) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers' stock pursuant to paragraph (j)(2) of this section.

(iii) The entire mill production of shelled peanuts from Segregation 3 or commingled Segregation 2 and 3 farmers' stock pursuant to paragraph (j)(1) of this section.

(iv) Positive lot identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3) of this section.

(v) Positive lot identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g) (1), (2), and (3) of this section.

(vi) Positive lot identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g) (2), and (3) of this section.

(vii) Positive lot identified lots of seed peanut residuals pursuant to paragraph (i) of this section.

Handlers who acquire, from other handlers, or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph (l)(2) of this section may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted." Prior to such exportation, the peanuts shall be certified as meeting the fragmented requirements and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain alfaxoin." Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (l)(2) of this section and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "restricted" domestic crushing. Meal produced from peanuts disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use, pursuant to the provisions of paragraph (g)(3) of the section. Shelling, fragmenting, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segregation 1 peanuts handled pursuant to paragraph (k) of this section, shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(m) *Disposition of shelled peanuts for use as domestic animal feeds.* (1) Handlers may sell to or contract with other handlers, for further milling and/or processing for use in domestic animal feed, shelled peanuts which fail to meet requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Lots of peanuts disposed of in this manner must be positive lot identified and accompanied by a valid grade inspection certificate. Transactions made in this manner shall be reported to the Committee by both the seller and the buyer, on a form provided by the Committee. Any such peanuts acquired by the receiving handler for disposition to use as domestic animals feed shall be held and milled separate and apart from peanuts destined to human consumption outlets, and further disposition shall be regulated as provided for in paragraph (m)(2) of this section, hereinafter.

(2) Handlers may dispose of, for use as domestic animal feeds, shelled peanuts which fail to meet requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulations (§ 998.200): *Provided*, That each lot of peanuts so disposed of is treated with a coloring or dyeing solution approved and prescribed by the Committee; handled and shipped under positive lot identification procedures, (except for bulk loads, red tags shall be used and marked, "For Animal Feed-Not for Human Consumption"); assayed for aflatoxin and covered by a valid "negative" aflatoxin certificate; and inspected by the Federal or Federal-State Inspection Service and a certification made as to moisture, foreign material content, and that a minimum of 80 percent of the peanuts must show evidence of the dye or coloring agent, which is the Committee's requirement specified for dyeing or coloring. Each lot of inedible quality peanuts disposed of for use as domestic animal feed shall be reported to the Committee by the handler as prescribed by the Committee on a form provided by the Committee, and the handler's bill of lading and this invoice covering the shipment of each such lot shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption."

§ 998.300 Terms and conditions of indemnification—1987 crop peanuts.

(a) For the purpose of paying indemnities on a uniform basis pursuant to § 998.36 of the peanut marketing agreement effective July 12, 1965, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled to the outgoing quality requirements and into one of the categories listed in the final paragraph of these terms and conditions, on which the handler has withheld shipment or storage or the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of chemical assay.

(b) If the chemical assay results on samples drawn prior to shipment pursuant to paragraph (c) of the Outgoing Quality Regulation (§ 998.200) are so high in aflatoxin content that a lot of peanuts should be handled pursuant to these Terms and Conditions, the handler shall certify to the Committee within ten (10) days of the date shown on the aflatoxin certificate whether the milling of the peanuts in the lot was supervised by the Area Association as "additional peanuts." For the purposes herein, the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

(c) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements of the agreement, shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the Outgoing Quality Regulation (§ 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on assays to date or further assays, that the lot is so high in aflatoxin that it should be handled pursuant to these Terms and Conditions, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification. If the lot is covered by a sales contract, the lot may be rejected to the handler.

(d) In an effort to make such eligible peanuts suitable for human consumption, and to minimize indemnification costs, the Committee

and the Agricultural Marketing Service shall, prior to disposition for crushing cause all suitable lots to be remilled or custom blanched or both. "Custom blanching" means the process which involves blanching peanuts, and the subsequent removal of damaged peanuts for the purpose of eliminating aflatoxin from the lot. The process may be applied to either an original lot or the new lot which results from remilling. Custom blanching shall be performed only by those firms determined by the Committee to have the capability to remove the aflatoxin and who agree to such terms, conditions and rates of payment as the Committee may find to be acceptable.

(e) If the Committee and the Agricultural Marketing Service conclude that such lot is not suitable for remilling or custom blanching, the lot shall be declared to crushing and shall be disposed of by delivery to the Committee at such point as it may designate. The indemnification payment for "quota peanuts" so disposed of shall be 43 cents per pound, or the indemnification value of the lot of peanuts as hereinafter provided for "quota peanuts," less five cents per pound, whichever is lower. The indemnification payment for "additional peanuts" so disposed of shall be the indemnification value as hereinafter provided for "additional peanuts," less three cents per pound. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. Payment shall be made to the handler as soon as practicable after delivery of the peanuts to the Committee. The salvage value for peanuts declared for crushing shall be paid to, and retained by, the Committee to offset indemnification expenses.

(f) If it is concluded that the lot should be remilled or custom blanched, expenses shall be paid by the Committee on those lots which, on the basis of the inspection occurring prior to shipment, contained not more than 1.00 percent damaged kernels other than minor defects. Lots with damage in excess of 1.00 percent on such inspection shall be remilled without reimbursement from the committee for milling or freight, but otherwise shall be indemnifiable the same as lots with not more than 1.00 percent damage.

(g) The indemnification value of peanuts delivered to the Committee for indemnification shall be as listed in the third from the last paragraph of these terms and conditions.

(h) The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall include an allowance for remilling of two and one-half cents per pound on the original weight. The indemnification payment on the pounds of peanuts removed in the process and not cleared for human consumption shall be: for "quota peanuts," 43 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts," whichever is lower; and for "additional peanuts," the indemnification value as hereinafter provided for "additional peanuts." Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plus the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and 43 cents per pound or the applicable indemnification value, whichever is lower, of the weight of reject peanuts removed from the lot. On lots which are custom blanched without remilling, the indemnification payment shall be determined in the same manner.

(i) Claims for indemnification on current crop year peanuts may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay, to the extent of the raw peanut equivalent value of the peanuts used in the product so withheld, such claims as it determines to be valid.

(j) Payment shall be made to the handler claiming indemnification or receiving the rejected lot as soon as practicable after receipt by the Committee of such evidence of remilling or custom blanching and clearance of the lot for human consumption as the Committee may require and the delivery of the peanuts not cleared for human consumption to the delivery point designated by the Committee. If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched, or both, the Committee shall declare the entire lot for indemnification, and the indemnification payment rate on "quota peanuts" shall be 43 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts," less five cents per pound, whichever is lower, plus other applicable costs authorized heretofore, and the indemnification payment for "additional peanuts" shall be the indemnification value for "additional peanuts" as hereinafter provided for "additional peanuts," less three cents per pound, plus other applicable costs authorized heretofore. However, the Committee shall refuse to pay indemnification on any lot(s) where it has reason to believe that the rejection of the peanuts arises from failure of the handler to use reasonable measures to receive and withhold from milling for edible use those Segregation 3 peanuts tendered to him either directly by a producer or by a country buyer, commission buyer or other like person. Furthermore, any misrepresentation by a handler in reporting acquisition, composition or disposition of any lot or lots of peanuts by such handler shall cause indemnification payments with respect to any such claim filed with the Committee by the handler on current crop year peanuts to be withheld unless the Committee finds that such action was inadvertent.

(k) Remilling may occur on the premises of any handler signatory to the marketing agreement or at such other plant as the Committee may determine. However, if the Committee orders remilling of a lot which has been found to contain aflatoxin prior to shipment from the locality of original milling, the Committee shall not pay freight costs should the handler move said lot to another locality for remilling.

(l) Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee no later than November 1, following the end of the current crop year.

(m) Each handler shall include, directly or by reference, in his sales contract the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an "appeal" inspection for aflatoxin. Results of the "appeal" inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the "appeal" sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller, and such peanuts shall be reoffered to the buyer to satisfy the covering contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot if he elects to do so. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the "appeal" sample test results, otherwise the buyer agrees that he forfeits the right to reject the lot and return it to the seller.

(2) If the buyer's or receiver's name is shown on the certificates covering a lot which, upon the pretesting sampling procedure prescribed in paragraph (c) of the Outgoing Quality Regulation (§ 998.200), exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot, if he elects to do so.

(3) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. The laboratory costs shall be for the account of the buyer and buyer agrees to pay them when invoiced by the laboratory or, in the event the seller has paid them, by the seller.

(n) Any handler who fails to include such provisions in his sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(o) In addition, should any handler enter into any oral or written sales contract which fixes the level of aflatoxin at which rejection may be made and hence conflicts with these terms and conditions, the handler doing so will not be eligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts on or after the filing date of a claim under such contract, except upon the Committee's finding that acceptance of such contract was inadvertent; and for purposes of this provision a claim shall be deemed to be filed when notice of possible rejection is first given to the Committee.

(p) Any handler who fails to conform to the requirements of paragraph (h) of the Incoming Quality Regulation (§ 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(q) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the Outgoing Quality Regulation (§ 998.200), shall be ineligible for any indemnification payments until such violation is corrected to the satisfaction of the Committee.

(r) Any handler who fails to remove, hold, or dispose of loose shelled kernels pursuant to paragraph (d)(1) of the 1987 Incoming Quality Regulation (§ 998.100) or paragraph (g) of the 1987 Outgoing Quality Regulation (§ 998.200) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee and/or any complaints of violations made by the Committee to the Secretary are resolved.

(s) Categories eligible for indemnification are as follows:

(1) *Cleaned inshell peanuts*

(i) U.S. Jumbos

(ii) U.S. Fancy Handpicks

(iii) Valencia-Roasting Stock[1]

(2) *U.S. Grade shelled peanuts*

(i) U.S. No. 1

(ii) U.S. Splits

(iii) U.S. Virginia Extra-Large

(iv) U.S. Virginia Medium

(3) *Shelled peanuts "with splits"*

(i) Runners with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a $^{16}/_{64} \times {}^{3}/_{4}$ slot screen.

(ii) Spanish with splits which do not contain more than 15 percent splits or 2 percent whole kernels which will pass through a $^{15}/_{64} \times {}^{3}/_{4}$ slot screen.

(iii) Virginias with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a $^{15}/_{64} \times {}^{3}/_{4}$ 1 slot screen.

(4) *Shelled Spanish jumbos.*—Spanish having not more than 5 percent kernels which fall through an $^{18}/_{64} \times {}^{3}/_{4}$ slot screen and which otherwise meet the grade requirements of U.S. No. 1 Spanish.

(t) However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) Were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation (§ 998.100) and paragraph (i) of the Outgoing Quality Regulation (§998.200); (2) failed the Outgoing Quality Regulation due to excessive damage and minor defects and such peanuts were subsequently blanched to remove such excess damage and minor defects pursuant to paragraph (h) of such regulation; (3) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects; and (4) were received or acquired from another handler pursuant to paragraph (i) of the Incoming Quality Regulation and were milled to meet requirements of the Outgoing Quality Regulation pursuant to paragraph (h) of such regulation.

(u) For the purpose of paying indemnification beginning August 1, of the current crop year, the domestic market price for each category of peanuts shall be determined by averaging the price(s) listed in the Peanut Market News, per category, during the most recent four week period. Such weekly price calculations shall extend to May 31, of the current crop year and the average price per category

[1] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

as of May 31, 1988, shall be applied during the remainder of the crop year.

(v) For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA–ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

(w) The indemnification value for each category of "quota peanuts" eligible for indemnification, except U.S. Splits of all types, shall be the domestic market price established during the averaging period, whether at the time the notice of claim is first filed with the Committee, or at the time of disposition of the peanuts, less two cents per pound (on the pounds indemnified) or the most recent price category listed in the Peanut Market News, whichever is lower. The indemnification values of U.S. Splits categories shall be the domestic market price established during the averaging period, whether at the time the notice of claim is first filed with the Committee, or at the time of disposition of the peanuts, less three cents per pound, or the most recent price listed for the U.S. Splits category, whichever is lower.

(x) The indemnification value for "additional peanuts" shall be equal to 45 percent of either 43 cents per pound or the established indemnification value, per category, of "quota peanuts," whichever is lower.

(y) The grade categories to which the indemnification values shall be applied are as follows:

Runners[1]	Virginias	Spanish
Jumbo	U.S. Extra Large	Spanish Jumbo.
Medium	U.S. Medium	U.S. No. 1
Select	U.S. No. 1	Spanish with Splits.
No. 1 (−18+16 screens)	Virginias with Splits	U.S. Splits.
Mail run with or without Splits	U.S. Splits	
U.S. Splits		

[1] Southeastern Peanut Association grades.

Dated: May 23, 1988.

Robert C. Keeney,

Director, Fruit & Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–11917 Filed 6–2–88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 88–092]

Restrictions on Importation of Horses From Switzerland

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations by adding Switzerland to the list of countries in which contagious equine metritis (CEM) exists. Because Switzerland is no longer free of CEM, we are restricting the importation of certain horses from that country to prevent the livestock of the United States from contracting the disease.

Stallions and mares from Switzerland that are older than 731 days will not be permitted into the United States under standard 3-day quarantine and testing procedures. Instead, they must be tested and treated in accordance with procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

DATES: Interim rule effective May 27, 1988. Consideration will be given only to comments postmarked or received August 2, 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. Please state that your comments refer to Docket Number 88–092. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including contagious equine metritis (CEM), into the United States CEM, a venereal disease, affects horses' fertility and breeding.

Section 92.2(i)(1) lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries and horses that have been in any of those countries within the 12 months immediately preceding their export to the United States.

In reponse to information from Swiss animal health officials, confirming their finding of CEM on April 28, 1988, we are adding Switzerland to the list of countries in which CEM exists.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists warranting publication of this rule without prior opportunity for public comment. Immediate action is necessary to prevent carriers of CEM from introducing it into the United States.

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

Executive Order 12291 and Regulatory Flexibility Act

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

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

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

Stallions and mares from Switzerland that are older than 731 days must undergo testing and treatment in Switzerland and the United States that is more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the horses' importation into this country; it will therefore increase the cost to importers of horses from Switzerland. However, of the approximately 22,000 horses imported into the United States in 1987, only 56 came from Switzerland. We estimate that fewer than half of these would fall into the category of animals affected by this interim rule. We therefore expect this rule to have little or no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this interim rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they would import horses from any CEM-free country.

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. Section 92.2, paragraph (i)(1), is amended by adding "Switzerland," immediately after "Sweden,".

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

James W. Glosser.

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-12484 Filed 6-2-88; 8:45 am]

BILLING CODE 3410-34-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5529/R959; FRL-3391-1]

Pesticide Tolerances for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes permanent tolerances for residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on certain food and feed items. BASF Wyandotte Corp. petitioned EPA to establish these tolerances.

EFFECTIVE DATE: May 25, 1988.

ADDRESS: Written objections, identified by the document control number [FAP 7H5529/R959], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of April 29, 1988 (53 FR 15407), in which it was announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, had submitted adequate studies to establish permanent tolerances for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on raisins at 30 parts per million (ppm) and in or on dry grapes at 42 ppm.

This document establishes permanent tolerances for vinclozolin that were originally issued as temporary tolerances in the Federal Register of May 13, 1987 (52 FR 17941).

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

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

A related final rule [PP 1E2457/R960], that establishes a permanent tolerance for vinclozolin in or on grapes at 6 ppm in 40 CFR 180.380(b) is published elsewhere in this issue of the Federal Register.

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

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

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

List of Subjects in 40 CFR Parts 193 and 561

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

Dated: May 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 193.137 [Amended]

b. In § 193.137 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending paragraph (b) in the first sentence by removing the phrase "until May 13, 1988."

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 561.440 [Amended]

b. In § 561.440 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending the introductory text by removing the phrase "until May 13, 1988."

[FR Doc. 88-12527 Filed 6-2-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8208]

Income Taxes; Definition of Functional Currency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the definition of a taxpayer's functional currency. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, Washington, DC 20224, attention: CC:LR:T (INTL-982-86) (202-634-5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary income tax regulations under section 985 of the Internal Revenue Code of 1986. This section was added to the Code by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2590). Section 985 introduces a new statutory concept that requires all Federal income tax determinations to be made in a taxpayer's functional currency.

Prior Law

Prior to the Act, there were no statutory rules permitting the selection of a currency other than the United States dollar (dollar) as the currency used to determine the amount of income or loss (or earnings and profits) of a foreign operation. However, various methods of translating such amounts into dollars were provided in regulations and revenue rulings.

Statutory Provisions

Section 985(a) requires that, unless otherwise provided in regulations, all determinations for United States income tax pruposes must be made in a taxpayer's functional currency. Section 985(b)(1) provides that a taxpayer's functional currency is either (1) the dollar or, (2) in the case of a qualified business unit (QBU) (as defined in section 989(a)), the currency of the economic environment in which a significant part of the QBU's activities are conducted, provided the books and records are kept in such currency. Section 985(b)(2) provides that the dollar shall be the functional currency of any QBU whose activities are primarily conducted in the dollar. Section 985(b)(3) allows a taxpayer, to the extent provided in regulations, to elect to use the dollar as the functional currency for certain QBUs. The election cannot be revoked without the consent of the Commissioner. Finally, section 985(b)(4) provides that any change in functional currency shall be treated as a change in the taxpayer's method of accounting.

Immediate guidance is needed by taxpayers who must make their income tax determinations in functional currency for taxable years beginning after December 31, 1986. For this reason it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Explanation of Temporary Regulations

Section 1.985-1T(a) provides that a taxpayer and each QBU must make all determinations for United States income tax purposes in their respective functional currency. This section also provides that the regulations set forth in sections 1.985-1T through 5T are effective for taxable years beginning after December 31, 1986.

Section 1.985-1T(b) provides that the dollar shall be the functional currency of the following: (1) Any taxpayer that is not a QBU; a QBU that conducts its activities primarily in dollars; (3) a QBU that has the United States as its residence; (4) a QBU that elects to use, or is otherwise required to use, the dollar as its functional currency under § 1.985-2T; and (5) a QBU that does not keep books and records in the economic environment in which a significant part of its activities are conducted.

Section 1.985-1T(c)(1) provides that the functional currency of a QBU that is not required to use the dollar under § 1.985-1T(b) shall be the currency of the economic environment in which a significant part of the QBU's activities are conducted, provided the QBU keeps (or is presumed to keep under § 1.985-1T(c)(3)) books and records in such currency. Under § 1.985-1T(c)(2), the economic environment in which a significant part of a QBU's activities are conducted is determined by taking into account all the facts and circumstances. These facts and circumstances include, but are not limited to, the following factors: (1) The currency of the country in which the QBU is a resident as determined under section 988(a)(3)(B); (2) the principal currency of the QBU's cash flows: (3) the principal currency in which the QBU generates revenues and incurs expenses; (4) the principal currency in which the borrowing or lending of the QBU is conducted; (5) the currency of the QBU's principal sales market; (6) the duration of the QBU's business operations; and (7) the significance and/or volume of the QBU's

independent activities. The rate of inflation is not a relevant factor.

Section 1.985–1T(c)(3) provides that a QBU shall be presumed to maintain books and records in the currency of the economic environment in which a significant part of its activities are conducted.

Section 1.985–1T(c)(4) provides that if a QBU is not required to have a dollar functional currency and more than one currency could qualify as the QBU's functional currency under the facts and circumstances test of section 1.985–1T(c)(1), the QBU may choose any such currency as its functional currency.

Section 1.985–1T(c)(5) provides that ordinarily the currency that a foreign QBU uses for purposes of United States generally accepted accounting principles (GAAP) will be accepted as the functional currency of the QBU for income tax purposes, if the GAAP determination is based on facts and circumstances substantially similar to those set forth in § 1.985–1T(c)(2).

Various determinations under the Code, such as the determination of subpart F income or the amount of a distribution that constitutes a dividend, require that a foreign corporation must have a single functional currency. Thus, where a foreign corporation has one or more QBUs that do not have the same functional currency § 1.985–1T(d) provides that the single functional currency of the foreign corporation is determined by applying the rules set forth in § 1.985–1T(b) and (c) to the corporation's activities as a whole. Once the foreign corporation determines its functional currency, each QBU branch of the foreign corporation having a different functional currency will apply the principles of section 987 (relating to branch transactions) to translate its income or loss or earnings or profits into the foreign corporation's functional currency. Examples (8), (9), (10), (11), and (12) in § 1.985–1T(f) illustrate these rules.

Section 1.985–1T(e) provides, generally, that all nonfunctional currency transactions shall be translated into the QBUs functional currency on a separate transactions basis. Thus, if a QBU has a functional currency other than the dollar, the QBU must translate dollar or other nonfunctional currency transactions into its functional currency on a transaction-by-transaction basis. The separate transactions method is required in computing nonfunctional currency transactions even in situations where the QBU has no dollar books and records but is required to use the dollar as its functional currency because its economic environment is primarily the dollar. The Service is interested in receiving comments from taxpayers on the efficacy of requiring the use of a separate transactions method in all circumstances where a QBU has the dollar as functional currency under section 985(b) (1) and (2) and section 1.985–1T.

Section 1.985–1T(f) provides examples illustrating the provisions of § 1.985–1T.

In general, section 985(b)(3) provides an election to use the dollar as the functional currency to QBUs whose operations would otherwise require it to use a nondollar functional currency. The election, however, is available only to the extent provided in regulations. Section 1.985–2T(a) provides that only an eligible QBU may elect to use the dollar as its functional currency under section 985(b)(3). Section 1.985–2T(b) defines the term "eligible QBU" to mean a QBU whose functional currency is a hyperinflationary currency absent the dollar election. Generally, the term "hyperinflationary currency" means the currency of any country where there is cumulative inflation of at least 100% for a specified 36 calendar month period.

Section 1.985–2T(c) provides rules concerning the time and manner for making the dollar election. Section 1.985–2T(c)(1) provides that eligible QBUs that are branches of United States persons shall make the election by attaching a statement to the United States person's federal income tax return for the taxable year the election is made.

Section 1.985–2T(c)(2) provides election rules for eligible QBUs that are controlled foreign corporations or branches of controlled foreign corporations. Section 1.985–2T(c)(2)(i) provides that in such a case the election may be made either by the foreign corporation or by the controlling United States shareholder on behalf of the foreign corporation by filing a written statement with the Internal Revenue Service and a written notice to United States shareholders. The written statement requirement and the written notice requirement are set forth in § 1.985–2T(c)(2) (ii) and (iii), respectively.

Section 1.985–2T(c)(3) provides rules for making the election in the case of eligible QBUs that are noncontrolled foreign corporations or branches of noncontrolled foreign corporations. The dollar election must be made by the corporation or the majority domestic corporate United States shareholders on behalf of the corporation. The written statement and the written notice rules applicable to controlled foreign corporations also generally apply.

Section 1.985–2T(d) describes the effect of the dollar election. Section 1.985–2T(d)(1) provides that if a dollar election is made by or on behalf of an eligible QBU, the QBU shall be deemed to have the dollar as its functional currency. One effect of this rule is that each United States person that owns stock of an electing foreign corporation must make all of its federal income tax calculations with respect to the foreign corporation using the dollar as the corporation's functional currency.

Section 1.985–2T(d)(2) provides that, in general, any eligible QBU that elects to have a dollar functional currency must compute profit and loss or earnings and profits in dollars using the dollar approximate separate transaction method described in § 1.985–3T. An eligible QBU that has a dollar functional currency may use a separate transaction method only if the QBU demonstrates to the satisfaction of the Commissioner that it can properly employ such method.

Section 1.985–2T(d)(3) provides that if a dollar election is made then the dollar shall be the functional currency of any related person, or branch of any related person, that is an eligible QBU. The term "related person" means any person with the relationship defined in section 267(b) to the electing QBU (or to the United States or foreign person to which the electing QBU is a part). Further, if a dollar election is made for a QBU branch of any person, each eligible QBU branch of such person shall have the dollar as its functional currency.

Section 1.985–2T(d)(4) provides that in, general, if an eligible QBU's functional currency changes due to a dollar election, such change shall be deemed for purposes of § 1.985–4T (relating to method of accounting) to be consented to by the Commissioner. No adjustments under section 481(a) shall be required solely because of the change. However, the QBU must make the adjustments, if any, required by § 1.985–5T (relating to adjustments required upon a change in function currency). If a dollar election is not made by or on behalf of a QBU for its first taxable year beginning after December 31, 1986 in which it is an eligible QBU, any subsequent election will require the taxpayer to make adjustments to income and/or earnings and profits that must be accounted for over a specified four-year period. Generally, the adjustments are the differences that occur by recomputing a QBU's functional currency as the dollar. The differences shall retain their character for all purposes as if earned or incurred in the year of recomputation.

Section 1.985–2T(d)(5) provides examples illustrating § 1.985–2T.

Section 1.985–3T sets forth the United States dollar approximate separate transactions method. Section 1.985–3T(a) provides that, in general, the dollar approximate separate transactions method must be used to compute profit and loss or earnings and profits of a QBU that has elected the dollar as its functional currency pursuant to § 1.985–2T.

Section 1.985–3T(b) provides that under the dollar approximate separate transactions method of accounting, profit and loss or earnings and profits of a QBU shall be determined under the following four-step approach: (1) Preparing a profit and loss statement in the QBU's hyperinflationary currency; (2) Making the adjustment necessary to conform this profit and loss statement to United States accounting and tax principles; (3) Translating the amount of hyperinflationary currency as shown on such adjusted statement into dollars in accordance with § 1.985–3T(c); and (4) Adjusting the resulting dollar profit and loss or earnings and profits to reflect the amount of currency gain or loss as determined under § 1.985–3T(3)(d).

Section 1.985–3T(c) provides that, in general, the amounts shown on the profit and loss statement shall be translated into dollars at the average exchange rate for the translation period to which they relate. Special rules are provided for translating items of inventory, cost of good sold, depreciation, depletion, amortization, and prepaid items.

Section 1.985–3T(c)(2) describes the specific rules for translating items of inventory and cost of goods sold. Section 1.985–3T(c)(3) provides that amounts representing allowance for depreciation, depletion, or amortization shall be translated at the average exchange rate for the translation period in which the cost of the underlying asset was incurred. Section 1.985–3T(c)(4) provides that prepaid expenses or income shall be translated at the average rate for the translation period during which they were paid or received.

Section 1.985–3T(c)(5) provides that the average exchange rate for any translation period is the average of the daily exchange rates within the translation period. Section 1.985–3T(c)(6) provides that, in general, a translation period shall be each month within a QBU's taxable year. However, if a QBU computes its profit or loss or earnings and profits using translation periods that are less than a month, the QBU can elect to divide its taxable year into translation periods that are less than a month.

Section 1.985–3T(c)(7)(i) provides that no currency gain or loss is permitted with respect to dollar transactions. Thus, any transaction in which the amount that a QBU is entitled to receive is either denominated in terms of the dollar or is determined by reference to the value of dollar, must be computed in dollars on a separate transaction method. Section 1.985–3T(c)(7)(iii) provides that any transaction involving a third country currency shall be computed in dollars on a separate transactions method. A third country currency is defined as any currency other than either the hyperinflationary currency of the QBU or the dollar.

Section 1.985–3T(c)(8) provides examples illustrating section 1.985–3T.

Section 1.985–3T(d)(1) provides that currency gain or loss determined in accordance with § 1.985–3T(d)(2) shall increase or decrease the amount of dollar profit and loss or earnings and profits as determined pursuant to § 1.985–3T (a), (b), and (c).

In addition, section 1.985–3T(d)(1) provides that the amount of currency gain or loss determined under § 1.985–3T(d)(2) shall be from sources outside the United States.

Regulations under section 904(d) will provide rules allocating the amount of currency gain or loss computed under § 1.985–3T(d)(2). Generally, the amount of an eligible QBU's currency gain or loss will be allocated on a gross to gross basis (before application of its section 904(d)(2)(A)(iii)(III) exception from passive income for high-taxed income) among the foreign source income of the eligible QBU in each section 904(d) separate limitation category.

Regulations under section 954 or 952 will also provide rules for allocating the amount of currency gain or loss computed under § 1.985–3T(d)(2) against subpart F and nonsubpart F income. Generally, this will be accomplished by allocating the currency gain or loss among gross subpart F and gross nonsubpart F income of the eligible QBU in each section 904(d) separate limitation category after such amount has first been allocated for section 904(d) purposes.

Section 1.985–3T(d)(2) provides that the currency gain or loss of an eligible QBU, other than currency gain or loss attributable to third currency transactions, shall be the amount equal to: (1) The retained earnings for the taxable year as determined under § 1.985–3T(d)(4); plus (2) the amount of any distributions made during the taxable year translated at the average rate for the translation period or periods during which such distributions were made, minus (3) the amount representing retained earnings for the preceding taxable year as determined under § 1.985–3T(d)(4), minus (4) the amount of dollar profit (or plus the dollar loss) as determined for the taxable year pursuant to § 1.985–3T(b) (1), (2) and (3). Section 1.985–3T(d)(3) provides that all currency gain or loss computed under § 1.985–3T(d)(2) ordinary income or loss.

Section 1.985–3T(d)(4) provides that retained earnings for any taxable year shall be determined by first: (1) Preparing a balance sheet as of the end of such year from the QBU's books and records as recorded in the QBU's hyperinflationary currency; (2) making those adjustments necessary to conform this balance sheet to United States accounting and tax accounting principles; (3) translating the amount shown on the balance sheet into United States dollars in accordance to § 1.985–3T(d)(5). Retained earnings shall be the dollar amount equal to the excess of the aggregate dollar amount representing assets on the balance sheet (after adjustments and translation) over the aggregate dollar amount representing liabilities, reserves, and paid-in-capital on the balance sheet (after adjustments and translation).

Section 1.985–3T(d)(5) provides rules for translating amounts shown on the balance sheet (as adjusted) into dollars. Rules are provided for translating amounts representing inventory, depreciation and similar reserves, bad debts reserves, paid-in-capital, prepaid income or expenses, hyperinflationary cash, physical assets, long-term liabilities, and other assets and liabilities into dollars on the balance sheet.

Section 1.985–3T(d)(6) provides that dollar transactions shall be reflected as dollars on the balance sheet and third currency transactions shall be translated directly into dollars for purposes of the balance sheet.

Section 1.985–3T(c)(7) provides examples illustrating § 1.985–3T(d).

Section 1.985–4T(a) provides that the adoption of a functional currency is a method of accounting that cannot be changed without the consent of the Commissioner. Section 1.985–4T(b) provides that, generally, permission to change functional currencies will not be granted unless significant changes in the facts and circumstances occur.

Section 1.985–5T pertaining to adjustments required upon change in functional currency is reserved.

Non-applicability of Executive Order 12291

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Analysis

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been sumitted to the Office of the Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–1051.

Drafting Information

The principal authors of these temporary regulations are David Rosenberg and F. Scott Farmer of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign Investments in U.S., Foreign tax credit, FSC, Sources of Income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended to read as follows:

Income Tax Regulations

PART 602—[AMENDED]

Paragraph 1. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 602.101(c) is amended by inserting in the appropriate places in the table § 1.985–2T . . . 1545–1051.

PART 1—[AMENDED]

Par. 3. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.985–0T through 1.985–5T are also issued under the authority of 26 U.S.C. 985.

Par. 4. New §§ 1.985–0T through 1.985–5T are added immediately after § 1.981–3 to read as follows:

§ 1.985–0T Outline of regulation.

§ 1.985–1T Functional currency.

(a) Applicability and effective date.
(b) Dollar functional currency.
(c) Functional currency of a QBU that is not required to use the dollar.
(d) Single functional currency for a foreign corporation.
(e) Translation of nonfunctional currency transactions
(f) Examples.

§ 1.985–2T Election to use the United States dollar as the functional currency of a QBU.

(a) Background and scope.
(b) Eligible QBU.
(c) Time and manner for dollar election.
(d) Effect of dollar election.

§ 1.985–3T United States dollar approximate separate transactions method.

(a) Scope.
(b) In general.
(c) Translation into United States dollars.
(d) Currency gain or loss.

§ 1.985–4T Method of accounting.

(a) Adoption or election.
(b) Condition for changing functional currencies.
(c) Relationship to certain other income tax sections.

§ 1.985–5T Adjustments required upon change in functional currency. [Reserved]

§ 1.985–1T Functional currency.

(a) *Applicability and effective date*—(1) *Purpose and scope.* These regulations provide guidance with respect to defining the functional currency of a taxpayer and each qualified business unit (QBU), as defined in section 989(a). A taxpayer and each QBU must make all determinations under subtitle A of the Code (relating to income taxes) in their respective functional currency. This section sets forth rules for determining when the functional currency is the United States dollar (dollar) or a currency other than the dollar. Section 1.985–2T provides an election to use the dollar as the functional currency for certain QBUs that absent the election would have a functional currency that is a hyperinflationary currency, and explains the effect of making the election. Section 1.985–3T sets forth the accounting method electing QBUs must use to compute their profit and loss or earnings and profits. Section 1.985–4T provides that the adoption of a functional currency is a method of accounting and sets forth conditions for a change in functional currency. Finally, § 1.985–5T provides adjustments that are required to be made upon a change in functional currency.

(2) *Effective date.* The regulations set forth in § 1.985–1T through 5T are effective for taxable years beginning after December 31, 1986.

(b) *Dollar functional currency.* The dollar shall be the functional currency of a taxpayer or QBU described in any subparagraph of this paragraph (b) regardless of the currency used in keeping its books and records (as defined in section 989(a)).

(1) A taxpayer that is not a QBU.

(2) A QBU that conducts its activities primarily in dollars. A QBU conducts its activities primarily in dollars where the currency of the economic environment in which the QBU conducts its activities is primarily the dollar. The facts and circumstances set forth in paragraph (c)(2) of this section shall apply in making this determination.

(3) A QBU that has the United States as its residence (as defined in section 988(a)(3)(B)).

(4) A QBU that elects to use, or is otherwise required to use, the dollar as its functional currency under § 1.985–2T.

(5) A QBU that does not keep books and records in the currency of any economic environment in which a significant part of its activities is conducted. Whether a QBU keeps such books and records is determined in accordance with paragraph (c)(3) of this section.

Regardless of any change in circumstances, a QBU described in any subparagraph of this paragraph (b) may not change its functional currency unless the permission of the Commissioner is granted under § 1.985–4T.

(c) *Functional currency of a QBU that is not required to use the dollar*—(1) *General rule.* The functional currency of a QBU that is not required to use the dollar under paragraph (b) of this section shall be the currency of the economic environment in which a significant part of the QBU's activities is conducted, if the QBU keeps its books and records, or is presumed under paragraph (c)(3) of this section to keep its books and records, in such currency.

(2) *Economic environment.* For purposes of section 985 and the

regulations thereunder, the economic environment in which a significant part of a QBU's activities is conducted shall be determined by taking into account all the facts and circumstances.

(i) *Facts and circumstances.* The facts and circumstances that are considered in determining the economic environment in which a significant part of a QBU's activities is conducted include, but are not limited to, the following:

(A) The currency of the country in which the QBU is a resident as determined under section 988(a)(3)(B);

(B) The principal currency of the QBU's cash flows;

(C) The principal currency in which the QBU generates revenues and incurs expenses;

(D) The principal currency in which the borrowing or lending of the QBU is conducted;

(E) The currency of the QBU's principal sales market;

(F) The duration of the QBU's business operations; and

(G) The significance and/or volume of the QBU's independent activities.

(ii) *Rate of inflation.* The rate of inflation (regardless of how it is determined) shall not be a factor used to determine a QBU's economic environment.

(iii) *Consistency.* A taxpayer must consistently apply the facts and circumstances test set forth in this paragraph (c)(2) in evaluating the economic environnent of its QBUs, *i.e.*, its branches, that engage in the same or similar trades or businesses.

(3) *Books and records presumption.* A QBU shall be presumed to keep books and records in the currency of the economic environment in which a significant part of its activities are conducted. The presumption may be overcome only if the QBU can demonstrate to the satisfaction of the district director that a substantial nontax purpose exists for not keeping any books and records in such currency.

(4) *Multiple currencies.* If a QBU has more than one currency that satisfies the requirements of paragraph (c)(1) of this section, the QBU may choose any such currency as its functional currency.

(5) *Relationship of United States accounting principles.* If a QBU has its residence outside the United States (as determined under section 988(a)(3)(B)), the currency of the QBU for purposes of United States generally accepted accounting principles (GAAP) will ordinarily be accepted as the functional currency of the QBU for income tax purposes if the GAAP determination regarding such currency is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section.

(6) *Effect of changed circumstances.* Regardless of any change in circumstances, a QBU may not change the functional currency determined under this section (c) unless the permission of the Commissioner is granted under § 1.985–4T or considered to have been granted under § 1.985–2T(d)(4).

(d) *Single functional currency for a foreign corporation*—(1) *General rule.* This paragraph (d) applies to foreign corporations that have two or more QBUs all of which do not have the same functional currency. The foreign corporation shall be treated as having a single functional currency for the corporation as a whole that may be different from the functional currency of one or more of its QBUs. The determination of a foreign corporation's functional currency shall be made by first applying paragraph (d)(1)(i) and then paragraph (d)(1)(ii) of this section.

(i) *Step 1.* Each QBU of the foreign corporation determines its functional currency in accordance with the rules set forth in paragraphs (b) and (c) of this section and § 1.985–2T.

(ii) *Step 2.* The foreign corporation determines its functional currency applying the principles of paragraphs (b) and (c) of this section to the corporation's activities as a whole. Thus, if a foreign corporation has two branches, the corporation shall determine its functional currency by applying the principles of paragraphs (b) and (c) of this section to the combined activities of the corporation and the branches.

For purposes of this paragraph (d)(1), if a QBU of a foreign corporation has the dollar as its functional currency under § 1.985–2T (relating to the dollar election), the QBU's activities shall be considered dollar activities of the corporation.

(2) *Translation of income or loss of QBUs having different functional currencies than the foreign corporation as a whole.* Where the functional currency of a foreign corporation as a whole differs from the functional currency of one or more of its QBUs, each such QBU shall determine the amount of its income or loss or earnings and profits (or deficit in earnings and profits) in its functional currency under the principles of section 987 (relating to branch transactions). The amount of income or loss or earnings and profits (or deficit in earnings and profits) of each QBU in its functional currency shall then be translated into the foreign corporation's functional currency using the appropriate exchange rate as defined in section 989(b)(4) for purposes of determining the corporation's income or earnings and profits.

(e) *Translation of nonfunctional currency transactions.* Except for a QBU using the dollar approximate separate transactions method described in § 1.985–3T, each QBU shall translate each of its nonfunctional currency transactions using the separate transactions method—that is, gain or loss must be computed relative to a QBU's functional currency on a transaction-by-transaction basis.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example (1). P, a domestic corporation, operates a branch, X, in foreign Country A. X is a QBU within the meaning of section 989(a). The currency of Country A is the LC. All of X's purchases, sales, and expenses are in the LC. The laws of A require X to keep books and records in the LC. It is determined that the LC is the currency of X under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, the functional currency of X is the LC.

Example (2). P, a domestic bank, operates in branch form in foreign Country R. The branch is a QBU within the meaning of section 989(a). The currency of Country R is the LC. The laws of R require the branch to keep books and records in the LC. The branch customarily loans dollars and LCs. In the case of a LC loan, the branch fixes the terms of the loan by reference to a contemporary London Inter-Bank Offered Rate (LIBOR) on dollar deposits. For instance, the interest on the amount of the outstanding LC loan principal might equal LIBOR plus 2 percent and the amount of the outstanding LC loan principal would be adjusted to reflect changes in the dollar value of the LC. The branch is typically funded with dollar-denominated funds borrowed from related and unrelated parties. Under these facts, the branch's activities are primarily conducted in dollars. Thus, although the branch keeps its books and records in LCs, the branch's functional currency is the dollar.

Example (3). S, a foreign corporation organized in T, is wholly-owned by P, a domestic corporation. The currency of T is the LC. S's books and records are maintained in the LC. S purchases most of the products it sells from P. These purchases are made in dollars. In addition, most of S's gross receipts are generated by transactions denominated in dollars. S's only LC activities are paying local taxes, employee wages, and local expenses such as rent and electricity. It is determined that the LC is the currency of S under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, S's activities are primarily conducted in

dollars. Thus, although S maintains books and records in LCs and uses the LC as its currency under United States generally accepted accounting principles, S's functional currency is the dollar.

Example (4). S, a foreign corporation organized in U, is wholly-owned by P, a domestic corporation. The currency of U is the LC. S's sole function is acting as a financing vehicle for P and domestic corporations that are affiliated with P. All borrowing and lending between S and P and its domestic affiliates are in dollars. Furthermore, primarily all of S's other borrowings are dollar denominated. S's only LC activities are paying local taxes, employee wages, and local expenses such as rent and electricity. S keeps its books and records in the LC. Under these facts, S's activities are primarily conducted in dollars. Thus, although S keeps its books and records in LCs, S's functional currency is the dollar.

Example (5). S, a foreign corporation organized in A, is wholly owned by P, a domestic corporation. The currency of A is the LC. S's sole function is holding portfolio stock of Country A corporations and debt instruments denominated in LCs. The stock and the debt instruments could readily be held by P. S funds these investments primarily with contributions made by P. All dividends and interest paid to S are currently remitted to P. S performs no significant activities in A, has no employees, and no office or other fixed place of business. S's only other LC activity is paying local taxes. S keeps its books and records in the LC. Under these facts, S's activities are primarily conducted in dollars. Thus, although S keeps its books and records in LCs, S's functional currency is the dollar because its activities are primarily in the dollar. The result in this example would be the same if rather than holding portfolio stock of Country A corporations and debt instruments denominated in LCs, S's sole function was holding stock in domestic corporations and debt instruments denominated in dollars that could readily be held by P.

Example (6). S, a foreign corporation organized in A, is wholly-owned by P, a domestic corporation. The currency of A is the LC. S invests in a wide variety of stock and securities for its own account. S has a fixed place of business in A, employs portfolio managers, and has the independent authority to invest its earnings, finance its transactions, and manage its portfolio. S's activities are primarily funded through its earnings and third party loans. S conducts most of its borrowing and investment activity in the LC. S maintains its books and records in the LC. It is determined that the LC is the currency of S under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, S's functional currency is the LC.

Example (7). D is a domestic corporation whose primary activity is the extraction of natural gas and oil through a branch operation in foreign country Y. The branch is a QBU within the meaning of section 989(a). The currency of Y is the LC. The branch bills a significant amount of its natural gas and oil sales in dollars and a significant amount in LCs. The branch also incurs significant LC and dollar expenses and liabilities. The laws of country Y require the branch to keep its books and records in the LC. It is determined that the dollar is the currency of the branch under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Absent other factors indicating that the branch primarily conducts its activities in the dollar, D could choose either the dollar or the LC as the branch's functional currency because it has significant activities in both the dollar and the LC, provided the branch maintains books and records in both currencies.

Example (8). S, a foreign corporation organized in Country X, is wholly owned by P, a domestic corporation. S conducts all of its operations through two branches. Branch A is located in Country F and branch B is located in country G. S, A, and B are QBUs within the meaning of section 989(a). The currency of Country F is the FC and the currency of Country G is the LC. The functional currencies of S, A, and B are determined in a two step procedure.

Step 1: The functional currency of branches A and B. Branch A and branch B both conduct all activities in their respective local currencies. The FC is the currency of branch A and the LC is the currency of branch B under United States generally accepted accounting principles. This determination is based on facts and circumstances substantially similar to those set forth in paragraph (c)(2) of this section. Under these facts, the functional currency of branch A is the FC and the functional currency of branch B is the LC.

Step 2: The functional currency of S. S's functional currency is determined by disregarding the fact that A and B are branches. When A's activities and B's activities are viewed as a whole, S determines that it only conducts significant activities in the LC. Therefore, S's functional currency is the LC. See examples (10), (11), and (12) for examples of how the earnings and profits of a foreign corporation, which has branches with different functional currencies, are determined.

Example (9). Assume the same facts as in example (8), except that S does not exist and P conducts all of its operations through branch A and branch B. In this instance P's functional currency in Step 2 is the dollar, regardless of the fact that its branches' activities viewed as a whole are in LC, because P is a taxpayer whose residence is the United States under section 988(a)(3)(B)(i). Therefore, while the functional currency of branch A is the FC and the functional currency of branch B is the LC, the functional currency of P is the dollar because its residence is the United States.

Example (10). The facts are the same as in example (8). In addition, assume that in 1987 branch A has income of 100 FC and branch B has income of 100 LC as determined under section 987. The weighted average exchange rate for the year is 1 FC/2 LC. Branch A's income is translated into 200 LC for purposes of computing S's income and earnings and profits in 1987. Thus, the total earnings and profits of S from branch A and branch B for 1987 is 300 LC.

Example (11). X, a foreign corporation organized in Country W, is wholly owned by P, a domestic corporation. Both X and P are calendar year taxpayers that began business during 1987. X operates exclusively through two branches, A and B, both of which are located outside of Country W. The functional currency of X and A is the LC, while the functional currency of B is the DC. The income of B must be computed under section 987, relating to branch transactions. In 1987, A earns 900 LCs of nonsubpart F income and B earns 200 DCs of nonsubpart F income. Under section 904(d)(2), A's income is financial service income and B's income is general limitation income. In order to determine X's earnings and profits, B's income must be translated into LCs (the functional currency of X). The weighted average exchange rate for 1987 is 1 LC/2 DC. Thus, in 1987 X's current earnings and profits (and its post-1986 undistributed earnings) are 1000 LCs consisting of 900 LC's of financial services income earned by A and 100 LCs (200 DC/2) of general limitation income earned by B. Neither A nor B make any remittances during 1987.

In 1988, neither A nor B earns any income or generate any loss. On December 31, 1988, A remits 50 LCs directly to P. The remittance to P is considered to be remitted by A to X and then immediately distributed by X as a dividend. The 50 LC remittance does not result in an exchange gain or loss under section 987 to X because the functional currency of X and A is the LC. See section 987(3). Under section 904(d)(3)(D), the 50 LC dividend is treated as income in a separate category to the extent of the dividend's pro rata share of X's earnings and profits in each separate limitation category. Thus, 90 percent, or 45 LCs, is treated as financial services income, and 5 percent, or 5 LCs, is treated as general limitation income. After the dividend distribution, X has 950 LCs of accumulated earnings and profits consisting of 855 LCs of financial service limitation income and 95 LCs of general limitation income.

Example (12). The facts are the same as in example (11) except that A makes no remittance during 1988 but B remits 120 DCs to X on December 31, 1988, which X immediately converts into LCs, and X makes no dividend distribution during 1988. Assume that the appropriate exchange rate for the remittance is 1 LC/3 DCs. B's remittance triggers exchange loss to X. See section 987(3). Under section 987, the exchange loss on the remittance is 20 LCs calculated as follows: 40 LCs, which is the LC value of the 120 DC remittance (120 DCs/3), less 60 LC, their LC basis (120 DCs/2). Under section 987(3)(B), the 20 LC loss is allocated solely to X's general limitation income. At the end of 1988, X's accumulated earnings and profits (and post-1986 undistributed earnings) are 980 LCs (1000 LCs − 20 LCs). The 980 LCs consist of 900 LCs of financial services income and 80 LCs (100 LCs − 20 LCs) of general limitation income.

§ 1.985–2T Election to use the United States dollar as the functional currency of a QBU.

(a) *Background and scope.* Section 985(b)(3) of the Code provides that a qualified business unit ("QBU") with a functional currency other than the United States dollar (the "dollar") under section 985(b) (1) and (2) may, to the extent provided in regulations, elect to use the dollar as its functional currency. Pursuant to the regulatory authority provided by section 985(b)(3), this section permits an eligible QBU to elect to use the dollar as its functional currency. An election to use a dollar functional currency is not permitted for a QBU other than an eligible QBU. Paragraph (b) of this section defines an eligible QBU. Paragraph (c) of this section describes the time and manner for making the dollar election, and paragraph (d) of this section describes the effect of making the election. For the definition of a QBU, see section 989(a).

(b) *Eligible QBU*—(1) *In general.* The term "eligible QBU" means a QBU whose functional currency is a hyperinflationary currency absent the dollar election. See § 1.985–1T to determine the functional currency of a QBU absent the dollar election.

(2) *Hyperinflationary currency.* The term "hyperinflationary currency" means the currency of a country in which there is cumulative inflation during the base period of at least 100 percent as determined by reference to the consumer price index of the country listed in the monthly issues of "International Financial Statistics" or a successor publication of the International Monetary Fund. Base period means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year.

(c) *Time and manner for dollar election*—(1) *QBUs that are branches of United States persons.* If an eligible QBU is a branch of a United States person, the dollar election shall be made by attaching a statement to the United States person's—

(i) Timely filed federal income tax return (including extensions) for the taxable year the election is made, or

(ii) Amended return for the first taxable year beginning in 1987 filed within 180 days after the date this Temporary Regulation is promulgated in the **Federal Register**, in the case of an election for the person's first taxable year beginning in 1987.

The statement shall identify the election as a "Dollar Election" and describe the country where the principal place of business of the eligible QBU is located.

(2) *Eligible QBUs that are controlled foreign corporations or branches of controlled foreign corporations*—(i) *In general.* If an eligible QBU is a controlled foreign corporation (as described in section 957), or a branch of a controlled foreign corporation, the election may be made either by the foreign corporation or by the controlling United States shareholders on behalf of the foreign corporation by—

(A) Filing the written statement described in paragraph (c)(2)(ii) of this section at the time and in the manner prescribed therein, and

(B) Providing the written notice required by paragraph (c)(2)(iii) of this section at the time and in the manner prescribed therein.

The term "controlling United States shareholders" means those United States shareholders (as defined in section 951(b)) who, in the aggregate, own (within the meaning of section 958(a)) greater than 50 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote. If the foreign corporation is a controlled foreign corporation (as described in section 957) but the United States shareholders do not, in the aggregate, own the requisite voting power, the term "controlling United States shareholders" means all the United States shareholders (as defined in section 951(b)) who own (within the meaning of section 958(a)) stock of the controlled foreign corporation.

(ii) *Written statement.* The written statement required by paragraph (c)(2)(i)(A) of this section shall be jointly executed by the controlling United States shareholders (or by an officer or director of the foreign corporation with the authority to act for the foreign corporation, if the election is made by the corporation). The statement shall be filed with the Director of the Internal Revenue Service Center, 11601 Roosevelt Blvd., Philadelphia, Pennsylvania 19155, within 180 days after the close of the taxable year of the foreign corporation with respect to which the dollar election is made (or 270 days in the case of the foreign corporation's first taxable year beginning in 1987, if the dollar election is made for such year). The statement shall set forth: The name and country of organization of the foreign corporation; the country where the principal place of business of each eligible QBU that is a branch of the foreign corporation is located; the names, addresses, taxpayer identification numbers and stock interest of the controlling United States shareholders (or all the United States persons known by the foreign corporation who own (within the meaning of section 958(a)) stock in the corporation, if the election is made by the foreign corporation); that the dollar election is being made by or for the foreign corporation (or an eligible QBU branch of such corporation); the names, addresses, taxpayer identification numbers of all United States persons notified of the dollar election; and such other information as the Commissioner may by forms or otherwise require.

(iii) *Notice.* Prior to filing the written statement described in paragraph (c)(2)(ii) of this section, the controlling United States shareholders (or the foreign corporation, if the dollar election is made by the corporation) shall provide written notice of the dollar election made to all United States persons known to be shareholders who own (within the meaning of section 958(a)) stock of the foreign corporation. Such notice shall also include all information set forth in the written statement (as described in paragraph (c)(2)(ii) of this section).

(iv) *Reasonable cause exception.* Failure of the controlling United States shareholders (or the foreign corporation, if the dollar election is made by the corporation) to timely file the written statement required by paragraph (c)(2)(i)(A) of this section or to provide written notice to a United States person required to be notified by paragraph (c)(2)(iii) of this section shall not invalidate the dollar election made, if it is established to the satisfaction of the district director that reasonable cause existed for such failure.

(3) *Eligible QBUs that are noncontrolled foreign corporations or branches of noncontrolled foreign corporations.* If an eligible QBU is a noncontrolled foreign corporation (a foreign corporation not described in section 957), or a branch of a noncontrolled foreign corporation, the dollar election must be made by the corporation or the majority domestic corporate shareholders on behalf of the corporation by applying the rules provided in paragraph (c)(2)(i) (A) and (B), (ii), (iii), and (iv) of this section substituting "majority domestic corporate shareholders" for "controlling United States shareholders" wherever it appears therein. The term "majority domestic corporate shareholders" means those domestic corporate shareholders (as described in section 902(a)) who, in the aggregate, own (within the meaning of section 958(a)) greater than 50 percent of the total combined voting stock of all classes of stock of the noncontrolled foreign

corporation entitled to vote that is owned (within the meaning of section 958(a)) by all the domestic corporate shareholders.

(d) *Effect of dollar election*—(1) *General rule.* If a dollar election is made (or considered made under paragraph (d)(3) of this section) by or on behalf of an eligible QBU, the QBU shall be deemed to have the dollar as its functional currency. Since the use of a dollar functional currency pursuant to this § 1.985–2T is an accounting method of the foreign corporation, each United States person that owns (within the meaning of section 958(a)) stock of the foreign corporation must take all of its federal income tax calculations with respect to the foreign corporation using the dollar as the corporation's functional currency (regardless of when ownership was acquired or whether the United States person received the written notice required by paragraph (c)(2)(i)(A) of this section).

(2) *Computation*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, any eligible QBU that pursuant to this § 1.985–2T has a dollar functional currency must compute profit and loss or earnings and profits (or deficits in earnings and profits) in dollars using the dollar approximate separate transactions method described in § 1.985–3T.

(ii) *Separate transactions method.* An eligible QBU that has a dollar functional currency pursuant to this § 1.985–2T may use a separate transactions method only if the QBU demonstrates to the satisfaction of the Commissioner that it can properly employ such method. For the definition of a separate transactions method, see § 1.985–1T(e).

(3) *Conformity*—(i) *General rule.* If a dollar election is made under § 1.985–2T for an eligible QBU ("electing QBU"), then the dollar shall be the functional currency of any related person, or branch of any related person, that is an eligible QBU. For purposes of the preceding sentence, the term "related person" means any person with a relationship defined in section 267(b) to the electing QBU (or to the United States or foreign person of which the electing QBU is a part). In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c).

(ii) *Branches of United States and foreign persons.* If a dollar election is made for a QBU branch of any person, each eligible QBU branch of such person shall have the dollar as its functional currency.

(4) *Required adjustments*—(i) *In general.* Except as provided in paragraph (d)(4)(ii) of this section, if an eligible QBU's functional currency changes due to a dollar election, or to the conformity requirements of paragraph (d)(3) of this section, such change shall be deemed for purposes of § 1.985–4T to be consented to by the Commissioner. No adjustments under section 481(a) shall be required solely because of the change. However, the QBU must make the adjustments, if any, required by § 1.985–5T.

(ii) *Additional adjustments required in certain circumstances*—(A) *In general.* If a dollar election is not made by or on behalf of a QBU for its first taxable year beginning after December 31, 1986 in which it is an eligible QBU, then any dollar election made by or on behalf of the QBU, or considered made under the conformity rules of paragraph (d)(3) of this section, that results in a change in the QBU's functional currency shall be treated as having been made with the consent of the Commissioner. In such a case, however, the taxpayer must make adjustments required by paragraph (d)(4)(ii)(B) of this section.

(B) *Adjustments.* The adjustments required by this paragraph shall be computed for the period beginning with the first taxable year in which the QBU was an eligible QBU and ending with the taxable year prior to the year to which the dollar election is made (whether the QBU is an eligible QBU in the intervening years is irrelevant). The adjustments shall be taken into income and/or earnings and profits ratably in each of the four taxable years beginning with the year of the dollar election. The adjustments are the differences that occur by recomputing the QBU's functional currency as the dollar for each year within the period involved. The differences shall retain their character for all purposes as if earned or incurred in the year of recomputation.

(5) *Illustrations.* The provisions of this section are illustrated by the following examples.

Example (1). X is a calender year domestic corporation that in 1987 establishes a branch, A, in Country Z. A's functional currency under section 985 (b)(1) and (2) and 1.985–1T is the "h", the currency of Country Z. The cumulative inflation in Country Z exceeds 100 percent for the thirty-six months prior to January 1988 as measured by the consumer price index of Country Z listed in the monthly issues of the "International Financial Statistics". Accordingly, A is an eligible QBU in 1987 because the h is a hyperinflationary currency. Thus, X may elect the dollar as the functional currency of A for 1987.

Example (2). The facts are the same as in example (1) except X does not elect the dollar as the functional currency of A for 1987. Rather, X elects the dollar as the functional currency of A for 1991. The h was hyperinflationary currency for 1987, 1988, 1989, 1990, and 1991. The election constitutes a change in A's functional currency that is made with the consent of the Commissioner. However, because A was an eligible QBU in 1987, adjustments under § 1.985–2T (d)(4)(ii)(B) must be made for taxable years 1987 through 1990.

Example (3). The facts are the same as in example (2) except that the h was a hyperinflationary currency in 1987 and 1991 but not for 1988, 1989, and 1990. The results in example (2) are the same since the status of A as an eligible QBU in the intervening years of 1988, 1989 and 1990 is irrelevant.

Example (4). X is a domestic corporation that establishes A, an eligible QBU branch. X is wholly owned by domestic corporation Y. Y has an eligible QBU branch, B. Both X and Y are calendar year taxpayers. X makes a dollar election for A in 1987. Thus, A is an electing QBU. X and Y are related persons as defined in section 267(b) (*i.e.*, Y has a relationship under section 267(b)(3) to X, the corporation of which A is a part). Therefore, the dollar election by X for A in 1987 results in B, the eligible QBU branch of Y, also having the dollar as its functional currency for 1987.

Example (5). The facts are the same as in example (4), except that Y does not have an eligible QBU branch but owns all the stock of C, a calendar year controlled foreign corporation, which is not itself an eligible QBU but which has an eligible QBU branch, D. X and C are related persons as defined in section 267(b) (*i.e.*, C has a relationship under section 267(b0(3) to X, the corporation of which A is a part). Therefore, the dollar election by X for A in 1987 results in D, the eligible QBU branch of C, also having the dollar as its functional currency for 1987.

§ 1.985–3T United States dollar approximate separate transactions method.

(a) *Scope.* This section describes the United States dollar (dollar) approximate separate transactions method of accounting. Except as provided in § 1.985–2T(d)(2)(ii), this method of accounting must be used to compute profit and loss or earnings and profits (or deficits and earnings and profits) of a QBU (as defined in section 989(a) of the Code) that has the dollar as its functional currency pursuant to § 1.985–2T.

(b) *In general.* Under the dollar approximate separate transactions method of accounting, profit and loss or earnings and profits (or deficits in earnings and profits) of a QBU for its taxable year shall be determined in dollars by—

(1) Preparing a profit and loss statement from the QBU's books and records (within the meaning of section 989(a)) as recorded in the QBU's

hyperinflationary currency (as described in § 1.985–2T(b)(1));

(2) Making the adjustments necessary to conform such statement to those United States accounting and tax principles as provided by the appropriate Code section, such as section 987 or sections 986 and 964(a);

(3) Translating the amounts of hyperinflationary currency as shown on such adjusted statement into dollars in accordance with paragraph (c) of this section; and

(4) Adjusting the resulting dollar profit and loss or earnings and profits (or deficits in earnings and profits) in accordance with paragraph (d) of this section to reflect the amount of currency gain or loss as determined thereunder.

(c) *Translation into United States dollars*—(1) *In general.* Except as provided in paragraphs (c) (2), (3), and (4) of this section, the amounts shown on the profit and loss statement, as adjusted under paragraph (b)(2) of this section, shall be translated into dollars at the average exchange rate (as defined in paragraph (c)(5) of this section) for the translation period (as defined in paragraph (c)(6) of this section) to which they relate.

(2) *Cost of goods sold*—(i) *In general.* Amounts representing items of inventory reflected in the cost of goods sold or in closing inventory shall be translated—

(A) To the extent that such amounts represent items included in the opening inventory balance, so as to obtain the same amount of dollars which represented such items in the closing inventory balance for the preceding taxable year,

(B) To the extent that such amounts represent items purchased or otherwise first included in inventory during the taxable year, at the average exchange rate for the translation period in which the cost of such items was incurred, and

(C) To the extent that such amounts represent items included in the closing inventory balance, at the average exchange rate for the translation period in which the cost of such items was incurred. However, if amounts representing items included in closing inventory balance are either valued at market or written down to market value, they shall be translated at the exchange rate existing on the last day of the taxable year. For purposes of determining lower of cost or market, items of inventory included in the closing inventory balance shall be translated into dollars at the average exchange rate for the translation period in which the cost of such items was incurred and compared with market as determined in the QBU's hyperinflationary currency translated into dollars at the exchange rate existing on the last day of the taxable year.

(ii) *Determination of translation period.* The method used to determine the translation period of amounts representing items of inventory reflected in cost of goods sold or closing inventory may be based upon reasonable approximations and averages, including rates of turnover, provided the method is consistently used from year to year.

(3) *Depreciation, depletion, and amortization.* Amounts representing allowances for depreciation, depletion, or amortization shall be translated at the average exchange rate for the translation period in which the cost of the underlying asset was incurred.

(4) *Prepaid expenses or income.* Amounts representing expense or income paid or received in a prior taxable year shall be translated at the average exchange rate for the translation period during which they were paid or received.

(5) *Average exchange rate.* The average exchange rate for any translation period is the average of the daily exchange rates within the translation period.

(6) *Translation period*—(i) *In general.* Except as provided in paragraph (c)(6)(ii) of this section, a translation period shall be each month within a QBU's taxable year.

(ii) *Election.* A QBU can elect to divide its taxable year into translation periods that are less than a month. The election is made if the QBU computes its profit or loss or earnings and profits using translation periods that are less than one month. The translation period elected may not be changed without the consent of the district director.

(7) *Dollar and third country currency transactions.* Notwithstanding § 1.985–3T(b)(2) or any other provisions of paragraph (c) of this section, the following rules apply.

(i) *Dollar transactions.* No currency gain or loss is permitted with respect to dollar transactions since the dollar is the functional currency of the QBU. Thus, the amount of any payment or receipt of dollars shall be reflected in the profit and loss statement by the amount of such dollars. Also, any transaction in which the amount that a QBU is entitled to receive (or is required to pay) by reason of such transaction is either denominated in terms of the dollar or is determined by reference to the value of the dollar, must be computed in dollars on a separate transactions method. See § 1.985–1T(e) for the definition of a separate transactions method.

(ii) *Third country currency transactions.* A third country currency is any currency other than either the hyperinflationary currency of the QBU or the dollar. Any transaction involving a third country currency shall be computed in dollars on a separate transactions methods. Thus, any payment or receipt of third country currency shall be reflected in the profit and loss statement in dollars on a separate transactions method. Also, any transaction in which the amount that a QBU is entitled to receive (or is required to pay) by reason of such transaction is either denominated in terms of a third country currency, or is determined by reference to the value of one or more third country currencies, must be computed and reflected in the profit and loss statement in dollars on a separate transactions method.

(8) *Example.* The provisions of this paragraph (c) are illustrated by the following examples.

Example (1). S is an accrual basis eligible QBU that makes a dollar election for its first taxable year beginning in 1987. S's hyperinflationary currency is the "h". At the end of 1987, S has an account receivable for 100 dollars (*i.e.*, the account receivable is payable in dollars). Because this is a dollar transaction under paragraph (c)(7)(i) of this section, S's profit and loss for 1987 shall reflect the 100 dollars (not the hyperinflationary value of such dollars when accrued). If the account receivable were for 120 British pounds, rather than 100 dollars, the account receivable would be a third currency transaction under paragraph (c)(7)(ii) of this section. Therefore, S's profit and loss would reflect the dollar value of the 120 British pounds when accrued.

Example 2. S is an accrual basis eligible QBU that makes the dollar election for its first taxable year beginning in 1987. S has the "h" as its hyperinflationary currency (its functional currency absent the dollar election). During 1987, S's sales amounted to 240,000,000h, its currently deductible expenses were 26,000,000h, and its total inventory purchases amounted to 100,000,000h. During January and February of 1987, S purchased depreciable assets for 80,000,000h. At the end of 1987, S's closing inventory was 23,000,000h. No election to use a translation period other than the month is made, S had no transactions described in paragraph (c)(7) of this section, and S's closing inventory was computed on the first-in, first-out inventory method. S's adjusted profit and loss statement for 1987 is translated into United States dollars as follows:

Sales	Hyperinflationary currency	Exchange rate	United States dollars
(Jan-Feb)	10,000,000h	[1] 20:1	500,000
(Mar-Apr)	20,000,000	[1] 21:1	952,381
(May-Jun)	50,000,000	[1] 22:1	2,272,727
(July)	50,000,000	23:1	2,173,913
(August)	20,000,000	26:1	769,231
(Sept.)	20,000,000	28:1	714,286
(Oct.)	20,000,000	29:1	689,655
(Nov.)	20,000,000	30:1	666,667
(Dec.)	30,000,000	31:1	967,742
Total	240,000,000h		9,706,602
Cost of Goods Sold:			
Opening Inventory	0		0
Purchases:			
(Jan-Feb)	15,000,000h	[1] 20:1	750,000
(Mar-Apr)	10,000,000	[1] 21:1	476,190
(May-Jun)	30,000,000	[1] 22:1	1,363,636
(July)	20,000,000	23:1	869,565
(August)	10,000,000	26:1	384,615
(Sept.)	5,000,000	28:1	178,571
(Oct.)	5,000,000	29:1	172,414
(Nov.)	2,500,000	30:1	83,333
(Dec.)	2,500,000	31:1	80,645
Less Closing Inventory	(23,000,000)	[2]	(822,655)
	77,000,000h		3,536,314

[1] The average exchange rate for each month is the same.
[2] Since S uses the first-in, first-out inventory method, the closing inventory is assumed in normal circumstances to consist of purchases made during the most recent translation period as follows:

	Hyperinflationary currency	Exchange rate	United States dollars
December	2,500,000h	31:1	80,645
November	2,500,000	30:1	83,333
October	5,000,000	29:1	172,414
September	5,000,000	28:1	178,571
August	8,000,000	26:1	307,692
Total	23,000,000h		822,655
Non-Capitalized Exp.			
(Jan-Feb)	4,000,000h	[1] 20:1	200,000
(Mar-Apr)	2,500,000	[1] 21:1	119,048
(May-Jun)	2,500,000	[1] 22:1	113,636
((July)	2,000,000	23:1	86,957
(August)	3,000,000	26:1	115,385
(Sept.)	3,000,000	28:1	107,143
(Oct.)	2,000,000	29:1	68,966
(Nov.)	3,000,000	30:1	100,000
(Dec.)	4,000,000	31:1	129,032
Total	26,000,000h		1,040,167
Deprec.	4,000,000h	20:1	200,000
Total Cost & Exp.	107,000,000h		4,776,481
Operating Profit	133,000,000h		4,930,121

[1] The average exchange rate for each month is the same.

(d) *Currency gain or loss*—(1) *In general.* Currency gain or loss determined in accordance with paragraph (d)(2) of this section shall increase or decrease the amount of dollar profit and loss or earnings and profits as determined pursuant to paragraphs (a), (b), and (c) of this section. For the manner in which the currency gain or loss is allocated against Subpart F income, see sections 952 and 954 and the regulations thereunder. For the manner in which the currency gain or loss is treated under section 904(d), see section 904(d) and the regulations thereunder. The amount of currency gain or loss determined under paragraph (d)(2) of this section shall be from sources outside the United States.

(2) *Determination of currency gain or loss.* Currency gain or loss of a QBU, other than currency gain or loss attributable to a third currency transaction as described in paragraph (c)(7)(i) of this section, shall be the amount which equals—

(i) The retained earnings for the taxable year as determined under paragraph (d)(4) of this section, plus

(ii) The amount of any distributions (*e.g.*, remittances, dividends, returns of capital, foreign income taxes paid by a QBU branch elected to be credited under section 901 and other non-deductible expenses) made during the taxable year translated at the average exchange rate for the translation period or periods during which such distributions were made (or taken into account in accordance with paragraph

(c)(7) of this section, if applicable), minus

(iii) The amount representing retained earnings for the preceding taxable year as determined under paragraph (d)(4) of this section, minus

(iv) The amount of dollar profit (or plus the amount of any dollar loss) as determined for the taxable year pursuant to paragraph (b) (1) through (3) of this section.

(3) *Character.* The amount of currency gain or loss determined under paragraph (d)(2) of this section shall be ordinary income or loss.

(4) *Retained earnings.* Retained earnings for any taxable year shall be determined by first—

(i) Preparing a balance sheet as of the end of such year from the QBU's books and records (within the meaning of section 989(a)) as recorded in the QBU's hyperinflationary currency;

(ii) Making adjustments necessary to conform such balance sheet to United States accounting and tax principles as provided by the appropriate Code section, such as section 987 or sections 986 and 964(a) (including adjustments for accrued foreign income taxes of a QBU branch if elected to be credited under section 901);

(iii) Translating the amounts shown on the balance sheet (other than the amounts representing retained earnings) into United States dollars in accordance with paragraph (d)(5) of this section. Retained earnings shall be the dollar amount equal to the aggregate amount representing assets on the balance sheet (as adjusted and translated under this paragraph (d)(4) (ii) and (iii)) less the aggregate amount representing liabilities, reserves (other than reserves out of current or accumulated profits and earnings), and paid-in capital on the balance sheet (as adjusted and translated under this paragraph (d)(4) (ii) and (iii)).

(5) *Translation of balance sheet.* Amounts shown on the balance sheet as adjusted pursuant to paragraph (d)(4)(ii) of this section (other than amounts representing retained earnings) shall be translated into dollars as follows:

(i) *Inventory.* Amounts representing items of inventory included in the closing inventory balance shall be translated in accordance with paragraph (c)(2)(i)(C) of this section.

(ii) *Bad debt reserves.* Amounts representing bad debt reserves shall be translated at the average daily exchange rate for the taxable year.

(iii) *Paid-in capital.* Amounts representing paid-in capital shall be translated at the average exchange rate for the translation period in which such capital was paid in.

(iv) *Prepaid income or expense.* Amounts representing expenses or income paid or received in a prior taxable year shall be translated in accordance with paragraph (c)(4) of this section.

(v) *Hyperinflationary cash.* Amounts representing hyperinflationary cash on hand or in a checking or savings account shall be translated at the average exchange rate for the last translation period of the taxable year.

(vi) *Physical assets*—(A) *In general.* Amounts representing plant, property, equipment, goodwill, patents and other intangibles shall be translated at the average exchange rate for the translation period in which the cost of the asset was incurred.

(B) *Adjustment to physical assets.* Amounts representing depreciation, depletion, and amortization reserves shall be translated in accordance with paragraph (c)(3) of this section.

(vii) *Long-term liabilities.* Amounts representing long-term liabilities shall be translated at the average exchange rate for the translation period in which incurred.

(viii) *Other assets and liabilities*—(A) *In general.* Except as provided in paragraph (d)(5)(viii)(B) of this section, amounts representing assets and liabilities other than those specifically described in paragraphs (d)(5) (i) through (vii) of this section shall be translated at the average exchange rate for the translation period in which the cost of the asset was incurred or for the translation period in which the amount of the liability was incurred. For purposes of the preceding sentence, the method used to determine the translation period in which the cost of an asset or amount of a liability was incurred may be based upon reasonable approximations and averages, including rates of turnover and aging of accounts, provided the method is consistently used from year to year.

(B) *Accounts payable.* Amounts representing accounts payable shall be translated at the average rate for the last translation period; except, if the taxpayer establishes to the satisfaction of the district director that any such amounts relate to a different translation period, then the average exchange rate for that translation period shall apply.

(6) *Dollar and third currency transactions.* Notwithstanding any other provisions of this paragraph (d), where the amount representing an item shown on the balance sheet reflects a transaction described in paragraph (c)(7) of this section, such transaction shall be taken into account in accordance with that paragraph.

(7) *Illustration.* The provisions of this paragraph (d) are illustrated by the following example.

Example. S, an accrual method calendar year foreign corporation, makes the dollar election. S's hyperinflationary currency (its functional currency absent the dollar election) is the "h". For 1988, S's operating profit is 81,340,000h, or $2,038,200. S made a 5,000,000h distribution in April and December of 1988. S's translation period is the month. None of S's assets or liabilities reflect a transaction described in paragraph (c)(7) of this section. The average exchange rate for each month in 1988 is as follows:

January	32h:$1
Feb.-Mar.	33:1
April-May	34:1
June	35:1
July	36:1
Aug.-Sept.	37:1
Oct.	38:1
Nov.	39:1
Dec.	40:1

At the end of 1988, S's balance sheet, as adjusted and translated pursuant to this paragraph (d)(4) (ii) and (iii), is as follows:

	Hyperinflationary	Exchange rate	U.S. dollar
Hyperinflationary cash on hand	40,000h	40:1	$1,000
Checking account	400,000	40:1	10,000
Accounts Receivable—30 Day Accounts	20,000,000	[1] 40:1	500,000
60 Day Accounts	25,000,000	39:1	641,025
Inventory	65,000,000	[2]	2,500,000
Fixed assets—Property	90,000,000	27:1	3,333,333
Plant	190,000,000	[3]	6,785,714
Accumulated Depreciation	(600,000)	[3]	21,428
Equipment	10,000,000	[4]	340,000
Accumulated Depreciation	(400,000)	[4]	13,333
Common Stock—Stock A	500,000	34:1	14,706
Stock B	400,000	26:1	15,385

	Hyperinflationary	Exchange rate	U.S. dollar
Preferred Stock	1,000,000	32:1	31,250
C.D.s	5,000,000	39:1,	128,205
Total Assets	406,340,000		14,335,379
Accounts Payable	35,000,000	40:1 [5]	875,000
Long-term liabilities—A	150,000,000	27:1	5,555,556
Liability B	80,000,000	29:1	2,758,621
Liability C	30,000,000	36:1	833,333
Paid-in-Capital	40,000,000	26:1	1,538,462
Retained Earnings	71,340,000		2,774,407
Total Liabilities and Net Worth	406,340,000h		$14,335,379
The exchange gain or loss of S for 1988 is computed as follows:			
Retained Earnings—1988			$2,774,407
Plus—1988 Distributions—April		$147,059	
December		125,000	272,059
Pre-Distribution Earnings			3,046,466
Less—Retained Earnings—1987		$1,708,033	
Operating Profit—1988		2,038,200	3,746,233
Exchange Loss			($699,767)

[1] S ages its account receivable and groups them into two categories—those outstanding for 30 days and those outstanding for 60 days.
[2] Translated the same as closing inventory under paragraph (c)(2)(i)(C).
[3] The cost of S's plant was incurred in several translation periods. Therefore, the dollar cost reflects several translation rates.
[4] S has a variety of equipment. Therefore, S's dollar basis represent the sum of the hyperinflationary cost of each, translated according to the average exchange rate for the translation period incurred.
[5] S has no accounts payable outstanding for greater than 30 days.

§ 1.985-4T Method of accounting.

(a) *Adoption or election.* The adoption of, or the election to use, a functional currency shall be treated as a method of accounting. The functional currency shall be used for the year of adoption (or election) and for all subsequent taxable years unless permission to change is granted by the Commissioner.

(b) *Condition for changing functional currencies.* Generally, permission to change functional currencies shall not be granted unless significant changes in the facts and circumstances of the QBU's economic environment occur. If the determination of the functional currency of the QBU for purposes of United States generally accepted accounting principles (GAAP) is based on facts and circumstances substantially similar to those set forth in paragraph (d)(2) of this section, then ordinarily the Commissioner will only grant a taxpayer's request to change its functional currency (or the functional currency of its branch that is a QBU) to a new functional currency if the taxpayer (or its QBU) also changes to the new functional currency for purposes of GAAP.

(c) *Relationship to certain other income tax sections.* Nothing in this section shall be construed to override the provisions of any other sections of the Code that require the use of consistent accounting methods. Such provisions must be independently satisfied separate and apart from the identification of a functional currency. For instance, while separate geographical divisions of a taxpayer's trade or business may have different functional currencies, such geographical divisions may nevertheless be required to consistently use other methods of accounting.

§ 1.986-5T Adjustments required upon change in functional currency. [Reserved]

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved April 22, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-12562 Filed 6-2-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100 and 110

[CGD 05-88-12]

Special Anchorage Areas in Waterside Area of Elizabeth River Between Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes special anchorage areas to be used during events when the special local regulations in 33 CFR 100.501 are in effect. 33 CFR 100.501 applies to special events held throughout the year in the Waterside Area of the Elizabeth River between Norfolk and Portsmouth, Virginia.

EFFECTIVE DATE: This rule becomes effective on June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: On March 30, 1988, the Coast Guard issued a notice of proposed rulemaking concerning the establishment of special anchorage areas to be used as spectator anchorage areas during events when the special local regulations 33 CFR 100.501 are in effect, which was published in the **Federal Register** on April 7, 1988 (53 FR 11515). Interested persons were requested to submit comments and no comments were received.

Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the **Federal Register.** Delaying the effective date is unnecessary. Without the rule vessels under sixty five feet in length would be required to display anchor lights and shapes while anchored in the spectator anchorages during Harborfest 88.

Drafting Information

The drafters of this rule are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Rule

This rule establishes special anchorage areas to be used as spectator anchorages during events when the special local regulations 33 CFR 100.501 are in effect. These special anchorage areas are required to accommodate spectator craft during the special events

held throughout the year in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. The rule also amends 33 CFR 100.501 to permit vessels to remain in the regulated area established by that regulation without the permission of the Patrol Commander, if the vessels are anchored within one of the special anchorage areas. These special anchorage areas will only be in effect when an event regulated by 33 CFR 100.501 is being held. The regulations in 33 CFR 100.501 are normally in effect during the annual Harborfest, fireworks display throughout the year, marine parades, and various boat races. Vessels of not more than 65 feet in length, when at anchor in a special anchorage area are not required to carry or exhibit the white anchor lights required by the Inland Navigation Rules, 33 U.S.C. 2001 *et seq.*

Economic Assessment and Certification

The rule is considered to be non-major under Executive Order 12291 on Federal regulations and non-significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. No commercial entities will be affected by the establishment of these limited duration special anchorage areas. Since the economic impact of this rule is expected to be so minimal, the Coast Guard certifies that, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water).

33 CFR Part 110

Special anchorage areas, Anchorage grounds.

Final Regulations

In consideration of the foregoing, Parts 100 and 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

PART 110—ANCHORAGE REGULATIONS

2. Section 100.501 is amended by adding paragraph (b)(5) to read as follows:

§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia.

* * * * *

(b) * * *

(5) Vessels anchored in the special anchorage areas described in § 110.72aa(a) of this title may remain in the regulated area without the permission of the Patrol Commander.

* * * * *

PART 110—[AMENDED]

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

4. Section 110.72aa is added to read as follows:

§ 110.72aa Elizabeth River Spectator Vessel Anchorage Areas, between Norfolk and Portsmouth, Virginia.

(a) *Special Anchorage Areas.* (1) The waters of the Elizabeth River bounded by the shore and a line drawn between Hospital Point at latitude 36°50'50.5" North, longitude 76°18'09.0" West, and the tip of the channelside pier at the Holiday Inn Marina at latitude 36°50'29.5" North, longitude 76°17'52.5" West.

(2) The waters of the Elizabeth River adjacent to the Port Norfolk Reach section of the Elizabeth River, bounded by the shore and a line drawn between Hospital Point at latitude 36°50'50.55" North, longitude 76°18'14.509.0" West, and the tip of the southern most railroad pier at Port Norfolk at latitude 36°51'14.5" North, longitude 76°18'44.0" West.

(b) *Effective period.* These special anchorage areas in paragraph (a) are only in effect when the regulations in § 100.501 of this title are in effect.

Dated: May 26, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–12517 Filed 6–2–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD 05–88–13]

Drawbridge Operation Regulations, Berkley Bridge, Eastern Branch of the Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the operation of the Berkley drawbridge during Harborfest 88, which will be held in Norfolk, Virginia, on June 3, 4, and 5, 1988, and other special marine events that are regulated under 33 CFR 100.501.

EFFECTIVE DATE: These regulations become effective on June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: On March 22, 1988, the Coast Guard issued a notice of proposed rulemaking concerning this amendment, which was published in **Federal Register** on April 7, 1988 (53 FR 11517). Interesting persons were requested to submit comments and no comments were received. Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the **Federal Register**. Delaying the effective date could effect the safety of the participants, during Harborfest 88.

Drafting Information

The drafters of this rule are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Rule

This rule amends the regulations governing the operation of the Berkley drawbridge during Harborfest 88, which will be held in Norfolk, Virginia, on June 3, 4, and 5, 1988, and other special marine events that are regulated under 33 CFR 100.501. The amendment will enhance the Patrol Commander's authority to restrict vessel traffic by limiting access to the regulated area from the Eastern Branch of the Elizabeth River. 33 CFR 100.501 authorizes the Patrol Commander to control vessel traffic in the Waterside area of the Elizabeth River. (The Waterside area of the Elizabeth River includes the waters between Town Point Park, Norfolk, Virginia; the mouth of the Eastern

Branch of the Elizabeth River; and Hospital Point, Portsmouth, Virginia.) The Berkley bridge in the closed position is an effective barrier to larger vessels attempting to enter this area from the Eastern Branch. This rule will also help reduce vehicular traffic congestion before, during, and after the events by reducing the number of possible bridge openings during the events and within one hour of the start and ending of the events.

Economic Assessment and Certification

The amendment is considered to be non-major under Executive Order 12291 on Federal regulations and non-significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the amendment will not affect commercial navigation or industries on the Eastern Branch of the Elizabeth River, since their access between the Elizabeth River and its Eastern Branch will be regulated by the Coast Guard Patrol Commander under 33 CFR 100.501. Generally, commercial vessels will be allowed to pass through the bridge between scheduled events, except at times of peak traffic flows. Since the economic impact of this amendment is expected to be so minimal, the Coast Guard certifies that, this amendment will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117:

Bridges.

Final Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1007 is amended by adding paragraph (c) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

* * * * *

(c) The draw of the Berkley Bridge mile 0.4. at Norfolk, shall remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic.

Dated: May 26, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88–12518 Filed 6–2–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3390–7]

Approval and Promulgation of Implementation Plans, Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final rulemaking disapproving a revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to a temporary variance from the requirements of Title 35 of the ILLINOIS ADMINISTRATIVE CODE (IAC) 212.462(e) until December 4, 1989, for Demeter Incorporated (Demeter). USEPA's action is based upon a revision which was submitted by the State under Section 110 of the Clean Air Act.

The USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to process TSP SIP revisions which were in process at the time the new (PM_{10}) standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), USEPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceeding the approval of state plans specifically aimed at PM_{10}. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, USEPA's general policy is to approve it. It is USEPA's judgment that the regulations in this action would decrease the stringency of the TSP plan and are, therefore, likely to result in worse control of PM_{10} as well. Thus, USEPA is disapproving this TSP SIP revision.

EFFECTIVE DATE: This final rulemaking becomes effective on July 5, 1988.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6036, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 220 Churchill Road, Springfield, Illinois 62706.

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: On January 29, 1986, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to the Illinois SIP for Demeter which operates a grain elevator in unincorporated Winnebago County. Winnebago County is classified as better than the National Ambient Air Quality Standards (NAAQS) for the pollutant TSP.

The proposed SIP revision, would have allowed Demeter a variance from the requirements of 35 IAC 212.462(e)[1] until December 4, 1989. Rule 35 IAC 212.462(e) requires Demeter to file applications for construction and operating permits and to comply with the dump pit control requirements of 35 IAC 212.462(b) [2].This is because the firm's annual grain throughput increased 150 percent from the 1984 annual grain throughput on which the original permit was based. This increase exceeds the rules' threshold value of a 30 percent increase.

In granting a variance from the requirements for Demeter's dump pit,

[1] 35 IAC 212.462(e) was incorporated in the Illinois SIP as 203(d)(8)(F) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(F) because this is the regulation incorporated in the SIP.

[2] 35 IAC 212.462(b) was incorporated in the Illinois SIP as 203(d)(8)(B) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(B)(ii) because this is the regulation incorporated in the SIP.

the Illinois Pollution Control Board (IPCB) believes that the requirement for Demeter to install a grain dust control system on its dump pit immediately would subject the firm to unreasonable hardship because of Demeter's low profitability over the prior several years. The IPCB Opinion and Order of the Board is only a temporary variance, which requires Demeter to install a dust control system to comply with the regulations by December 4, 1989.

USEPA has reviewed this requested SIP revision for consistency with USEPA's policy on source specific SIP revisions.[3] This policy requires that for a State to secure USEPA approval of a relaxation of a SIP in an attainment area and yet continue the overall approval status of its plan, the State must demonstrate that the SIP as a whole, despite the relaxation, will continue to provide for maintenance of the NAAQS. This policy, in effect, requires a current modeling analysis, using reference modeling techniques and best available data.

The State's submittal in this matter did not include such a modeling analysis. On November 7, 1986 (51 FR 40447), USEPA proposed to disapprove this requested SIP revision for Demeter, because the State has not demonstrated that the revision will not jeopardize attainment and maintenance of the TSP NAAQS if the SIP revision were finally approved.[4]

Public comment was solicited on the proposed SIP revision and on USEPA's proposed disapproval of the incorporation of it into the SIP.

One public comment was received in response to USEPA's proposed rulemaking. It was from Demeter. Demeter's comment discussed the economic hardship of complying with the dump pit control requirements of 35 IAC 212.462(b). While this comment may be valid, a modeling analysis remains necessary.

Upon considering the public comment received, the State's submittal and the criteria for a SIP relaxation, USEPA announces its final rulemaking action to disapprove the incorporation of this temporary variance for Demeter into the Illinois SIP. The State has failed to demonstrate that this variance will not interfere with attainment and maintenance of the NAAQS.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

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

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7642.

Dated: May 27, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-12526 Filed 6-2-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 1E2457/R960; FRL-3390-9]

Pesticide Tolerance for 3-(3, 5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2, 4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a permanent tolerance for residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2, 4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolities containing the 3,5-dichloroaniline moiety in or on grapes. BASF Wyandotte Corp. petitioned EPA to establish this tolerance.

EFFECTIVE DATE: May 25, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 1E2457/R960], may be submitted to: Hearing Clerk (A–110) Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 29, 1988 (53 FR 15416), in which it was announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, had submitted adequate studies to establish permanent tolerances for vinclozolin and its metabolities containing the 3,5-dichloroaniline moiety in or on grapes at 6 parts per milliion (ppm).

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

This amendment establishes a permanent tolerance for vinclozolin that was originally issued as a temporary tolerance in the **Federal Register** of May 13, 1987 (52 FR 17955).

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

A related final rule, [FAP 7H5529/R959], that establishes permanent levels for vinclozolin in or on raisins at 30 ppm in 21 CFR 193.137(b) and in or on dry grapes at 42 ppm in 21 CFR 561.440 appears elsewhere in this issue of the **Federal Register.**

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances

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[3] It should be noted that in USEPA's November 7, 1986, notice of proposed rulemaking (51 FR 40447) on page 40447, in the third column, it was incorrectly stated that the relevant USEPA policy is contained in a July 29, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, to the Directors of the Air Management Divisions. This is not the case. The memorandum cited concerns only source specific SIP revisions relaxing a SIP in nonattainment areas. The cited policy does not consider relaxations for sources located in attainment areas. Since Demeter is located in an attainment area, the Sheldon Meyers memo does not apply. EPA, at 40 CFR 51.110(a), however, requires that any relaxation be accompanied by a demonstration that it will not interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

[4] On date July 1, 1987 (52 FR 24634) USEPA promulgated a PM_{10} standard. In that promulgation, USEPA stated that it would not relax TSP SIPs without a demonstration of attainment. Today's disapproval action is consistent with that statement.

or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: May 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.380 [Amended]

2. In § 180.380 *3-(3-,5-Dichlorophenyl)-5-ethenyl-5-methyl-1-2, 4-oxazolidinedione; tolerances for residues,* by amending paragraph (b) by removing the phrase "until May 13, 1988," from the first sentence.

[FR Doc. 88-12528 Filed 6-2-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 70905-8087]

Interjurisdictional Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement the Interjurisdictional Fisheries Act of 1986 (Act). The Act establishes a formula-based financial assistance program, the purposes of which are (1) to promote and encourage State activities in support of the management of interjurisdictional fishery resources, and (2) to promote the management of interjurisdictional fishery resources throughout their range. This rule provides guidelines with regard to State eligibility, apportionment and Federal matching mechanisms.

EFFECTIVE DATE: June 30, 1988.

ADDRESS: Copies of the Act and its legislative history may be obtained from Austin Magill, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Austin Magill, 202-673-5272.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements Title III of Pub. L. 99-659, the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4101 *et seq.*) which became effective October 1, 1987. This Act replaces and repeals Pub. L. 88-309, the Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779 *et seq.*) as amended. The Act establishes a formula-based financial assistance program for interjurisdictional fishery research projects and requires that these projects promote and encourage State activities in support of management of interjurisdictional fishery resources.

Proposed regulations were published November 23, 1987 (52 FR 44922). Comments were invited through December 23, 1987. The preamble to the proposed rulemaking contained a description of, and outlined the purposes of, the Act. This background information is not repeated here.

Comments and Responses

Comments were received from 15 States, the three Interstate Marine Fisheries Commissions, and the American Fisheries Society. The major concerns and comments raised are addressed below.

Enforcement Issues

One commenter was concerned that no funds are earmarked for enforcement, and that those funds available for that purpose are insufficient to accomplish regular annual State/Federal cooperative law enforcement. The commenter asked if the enforcement money could be set up as a dedicated line item in the budget.

NOAA does not believe setting up a dedicated line item is appropriate because the States have the option of using or not using the available money to fund enforcement activities. Since the money is considered part of an individual State's apportionment, the State may use it for enforcement or for other projects.

Comments from several States referred to the vagueness of the language or asked for clarification of what constitutes an enforcement agreement. The definition of an enforcement agreement has been clarified. Another commenter questioned whether State and Federal regulations must be compatible to qualify for funding. Issues regarding compatibility or disparity of State and Federal regulations will have to be resolved to the satisfaction of both signatories prior to signing the enforcement agreement.

Disaster Assistance

Several commenters were concerned about the definition of a commercial fishery failure and thought that the language under the disaster assistance section would preclude projects to restore bivalve resources. NOAA believes the intent of the Act is to continue disaster assistance as established under Pub. L. 88-309, when a disaster occurs due to natural or undetermined causes. The subsection on disaster assistance funds at § 253.5(a) has been revised to specify that any commercial fishery resource utilized under the apportionment formula will qualify for funding.

Eligibility Issues

Many commenters did not think the inland States with non-marine resource should qualify for funds under the Act. Under the Act, an inland state with non-marine resource qualifies for funding if the State meets any of the criteria specified in section 304(c)(3) of the Act.

A commenter from an inland State contends that, as a signatory of an interstate compact that is involved in protecting fishery resources, that state should qualify for matching funds for commercial fisheries resources landed from the body of water involved. We agree, since the Act in section 304(c)(3)(A) establishes this as a qualifying criterion.

Other Comments

Section 308(c) of the Act makes available non-matching funds to the three Interstate Marine Fisheries Commissions for use in developing interstate fishery management plans. There was concern from several commenters that the proposed rule contains no guidelines or proposal-review procedures. NOAA agrees and has added a subsection, "Other Funds" at § 253.5(b). One commenter questioned whether data collection should be an activity allowed in developing interstate fishery management plans. We believe the definition of an interstate fishery management plan under these regulations is broad enough to include data collection, especially since the definition specifies that it can be a plan that contains information regarding the status of fishery resources. Concern was also expressed as to whether the purpose and scope of the Act allowed

for information and education projects. We believe that such activities should be allowed, but only to the extent that they support a primary project. Effective regulation and enforcement of laws requires informing those affected as to the need for, and the benefits to be derived from, the regulations. Therefore, a definition for fisheries management is added, and data collection and information dissemination activities are included.

It was suggested that the word "adopted" used in reference to a State "adopting" an interstate fishery management plan be defined. A definition for "adopt" has been added in § 253.2.

The equation for calculating the apportionment formula was printed incorrectly in the **Federal Register**. A correction notice was published December 17, 1987 (52 FR 47990). The correct language for § 253.3(b)(1) is

$$\frac{\text{"Volume of X State}}{\text{Volume of all States}} = \text{A percent"}$$

not "value of all States" as it originally appeared. There was also some confusion in the way the formula was presented. It should read:

$$\frac{\text{"[A percent + B percent]}}{2} = \text{Apportionment Percentage"}$$

Changes From the Proposed Rule

In addition to the revisions discussed above, several of the sections have been reworded and renumbered for clarity. The changes are technical and non-substantive.

Classification

This section is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Under Secretary for Oceans and Atmosphere has determined that this final rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This action will not impose costs on the industry but will provide benefits through improved management, because the Act prescribes criteria for evaluating projects, requires that these projects promote and encourage State activities in support of management of interjurisdictional resources, and provides for the distribution of funds for projects. Therefore, a Regulatory Flexibility Analysis was not prepared.

There will be no additional reporting requirements imposed upon the State agencies over those required for Pub. L. 88–309. The reporting requirements of Pub. L. 88–309 were approved under OMB Control Number 0648–0102.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR PART 253

Fisheries, Financial assistance, Recordkeeping and reporting requirements.

Dated: May 31, 1988.

James E. Douglas, Jr.

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 253 is revised to read as follows:

PART 253—INTERJURISDICTIONAL FISHERIES

Sec.

253.1 Purpose and scope.
253.2 Definitions.
253.3 Apportionment.
253.4 State projects.
253.5 Other funds.
253.6 Administrative requirements.

Authority: 16 U.S.C. 4101 *et seq.*

§ 253.1 Purpose and scope.

(a) The purpose of this part is to implement Title III of Pub. L. 99–659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(b) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resource in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

§ 253.2 Definitions.

As used in this part, terms have the meaning ascribed in this section.

Act means the Interjurisdictional Fisheries Act of 1986, Pub. L. 99–659 (Title III).

Adopt means to implement an interstate fishery management plan by State action or regulation.

Commercial fishery failure means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(a) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise, or

(b) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement, signed and dated, between a State agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and State laws pertaining to the protection of interjurisdictional fishery resources.

Federal fishery management plan means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Fisheries management means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(a) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more States and the EEZ; or

(b) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(c) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

Interstate Commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or more States, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate Fisheries Research Program means research conducted by two or more State agencies under a formal interstate agreement.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by the member States of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the

States to conserve and manage the fishery resource.

Landed means the first point of offloading fishery resources.

NMFS Regional Director means the Director of any one of the five National Marine Fisheries Service regions.

Project means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his designee.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Northern Mariana Islands.

State Agency means any department, agency, commission, or official of a State authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

Value means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed, at the first point of landing.

§ 253.3 Apportionment.

(a) Apportionment formula. The amount of funds apportioned to each State is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such State during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the States during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\textit{Volume of X State}}{\text{Volume of all States}} = \text{A percent}$$

$$\frac{\textit{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[\textit{A percent} + \textit{B percent}]}{2} = \text{State percentage used to determine State's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each State's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct Regional Directors to promptly notify states of funds' availability.

(b) Beginning with fiscal year 1989, no State, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) is less than one-third of one percent, that State may receive funding if the State:

(1) Is signatory to an interstate fishery compact; or

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior; or

(3) Borders one or more of the Great Lakes; or

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any State that has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraphs (c) (1), (2), (3), (4) or (5) of this section may receive an apportionment for any fiscal year which is not less than one half of one percent of the total amount of funds available for apportionment for such fiscal year.

(e) No State may receive an apportionment under this section for any fiscal year which is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) Unused apportionments. Any part of an apportionment for any fiscal year to any State:

(1) That is not obligated during that year;

(2) With respect to which the State notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the State, may not be considered to be appropriated to that State and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a State referred to in this subsection is irrevocable.

§ 253.4 State projects.

(a) *General.* (1) Designation of State agency. The Governor of each State shall notify the Secretary which agency of the State government is authorized under its laws to regulate commercial fisheries and is therefore designated to submit applications and to enter into financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with State law to commit the State to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(2) States which choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any State may, through its State agency, submit to the NMFS Regional Director a proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate State(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any State, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to:

(1) Soundness of design;

(2) Possibilities of securing productive results;

(3) Minimization of duplication with other research projects in supporting management of interjurisdictional fishery resources and carried out under this title or under any other law or regulation;

(4) Organization and management of the project;

(5) Methods proposed for monitoring and evaluation of the success or failure of the project, and

(6) Consistency of the project with the purposes specified in § 253.1.

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this title, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The State has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The State has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies; in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval, to the State agency submitting the proposal or, if the proposal is submitted through an Interstate Commission, to such Commission and the State.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the State as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this title may be applied only to projects for which a proposal has been evaluated under § 253.4(b) and approved by the Secretary, except that up to $25,000 each fiscal year may be awarded to a State out of the State's regular apportionment to carry out an enforcement agreement, as defined under § 253.2. An enforcement agreement does not require State matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable State laws or regulations except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

§ 253.5 Other funds.

(a) *Funds for disaster assistance.* The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the States amount under the apportionment formula in § 253.3(a) will qualify for funding under this section.

(b) *Funds for Interstate Commerce.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions. The Commissions may submit proposals for these funds. Activities involved in the development of Interstate fishery management plans include, travel, support, meeting costs, research, or other general activities related to the development and maintenance of inter-State fishery management plans.

§ 253.6 Administrative requirements.

All grants and cooperative agreements made as a result of the Act are subject to Federal policies and guidance on financial assistance contained in Executive Orders, OMB circulars and regulations; Department of Commerce regulations and directives, NOAA directives; and terms and conditions of the awards.

[FR Doc. 88-12557 Filed 5-31-88; 5:05 pm]
BILLING CODE 3510-22-M

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50 CFR Part 301

[Docket No. 80111-8013]

Pacific Halibut Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement certain allocative regulations governing fishing for halibut in the Bering Sea as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to provide economic protection for the developing Pacific halibut fisheries carried out by persons who land their total annual catch of Pacific halibut at ports within Regulatory Areas 4C and 4E. Such persons generally are those who live on the Pribilof Islands and in communities on the west coast of Alaska including Nelson and Nunivak Islands.

EFFECTIVE DATE: June 1, 1988.

ADDRESSES: Copies of documents supporting this rule may be obtained from James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953 and amended in 1979. The Convention is carried out by the International Pacific Halibut Commission (IPHC).

Until 1987, all regulations governing the Pacific halibut fishery were developed by the IPHC and, for United States fishermen, recommended to the Secretary of State for approval and published at 50 CFR Part 301. However, section 5(c) of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c(c), Pub. L. 97-176) provides for the appropriate Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act (Magnuson Act, Pub. L. 94-265) to develop regulations, including limited access regulations, governing the United States portion of Convention waters and applicable to nationals or vessels of the United States which are in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as their primary

purpose will be developed by the Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California.

The Council, after soliciting halibut allocation regulatory proposals from the public, decided to consider only those allocative regulations adopted in 1987 by the IPHC for Regulatory Areas 4C and 4E. The Council's specified objective in taking this action was to maintain the allocative effects of previous IPHC regulations for both regulatory areas. The Council's Halibut Management Team (MT) prepared a draft environmental assessment and regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) that assessed the potential environmental and economic effects of all reasonable alternatives considered by the Council as required by the National Environmental Policy Act of 1969, Executive Order 12291 and NOAA policy. A notice of availability of that document was published in the Federal Register on October 28, 1987 (52 FR 41485).

At its December 8–11, 1987 meeting, the Council considered public testimony and the recommendations of its Advisory Panel (AP) and Scientific and Statistical Committee (SSC). The Council then voted to adopt preferred alternatives and solicit public comment on the proposed rule. The MT revised the EA/RIR/IRFA accordingly (revised draft dated January 1988). A proposed rule containing the Council's preferred alternative and request for comment was published in the Federal Register on March 18, 1988 (52 FR 8938). Description of and principal reasons for the proposed regulatory amendment are presented in the proposed rule.

Public Comments

A total of 12 letters of comment were received before the end of the public comment period on April 14, 1988. Of this total, eight letters came from fishing industry representatives, two came from State of Washington representatives to the U.S. Congress, one came from the State of Washington Department of Fisheries, and one came from two State of Alaska legislators. Briefly, nine of the comments received opposed specific allocations of the Pacific halibut resource as proposed for Regulatory Area 4E. Two commenters expressed dissatisfaction with the fact that no specific allocations were recommended by the Council for Regulatory Area 4B. One commenter was supportive of the proposed allocative measures, especially for Regulatory Area 4C. A summary of all comments received and a response to each follows.

Comment: All opposing commenters expressed the opinion that the proposed allocation of 80 percent of the Pacific halibut quota in Regulatory Area 4E to local fishermen (i.e. those who land their total annual halibut catch at a port within Area 4E, or within the closed area) violated National Standard 4 of the Magnuson Act by discriminating against out-of-state fishermen. They were also opposed, as a matter of policy, because of their concern that this approach would encourage future partitioning of halibut and other fishery resources among coastal communities.

Response: Without addressing legal and policy questions, the proposed "80-percent" provision is not approved and is not included in this final rule because it is superfluous in achieving the Council's stated halibut allocation objectives in Regulatory Area 4E. The "80-percent" provision would be redundant in combination with current vessel clearance regulations described in § 301.13 (53 FR 10540, April 1, 1988) and trip limit provisions (§ 301.10(c)) of this final rulemaking since 85 percent of the total Area 4E halibut harvest was achieved by "local fishermen" in 1987 with the vessel clearance provision, only. The added assurance sought by the Council that the same relative distribution of the Area 4E halibut catch will occur in 1988 can be achieved by combining only the trip limit and vessel clearance provisions. This combination is similar to one previously used by the IPHC for Area 4C.

Comment: One commenter questioned the quality of the EA/RIR/IRFA analysis. The commenter claimed that few data on which environmental and economic impact conclusions are based were presented, and that quantitative findings indicating an economic loss under the proposed alternative were dismissed by qualitative and unsupported statements.

Response: Paucity of data on which to base environmental and economic impact conclusions is a chronic problem in the analyses of the potential effects of fishery regulatory actions. For this reason, the Council and NOAA must often base their impact projections on certain explicit and reasonable assumptions about the future behavior of a fishery. The EA/RIR/IRFA analysis of this regulatory action made such assumptions. Further, the Council's analytical methodology was governed in part by the intent to maintain the allocative effects of the 1987 IPHC regulations in Areas 4C and 4E and was correctly limited to the marginal effects of alternatives relative to the status quo.

Limited data and the use of assumptions unquestionably increase the qualitative aspects of an analysis. The fact that qualitative information may be taken into account in determining net benefits to society underscores the importance of the public review and comment process through which the Council develops its regulatory recommendations. Opposing views should be made known during this process so that analyses can be reconsidered and changed if necessary. An early draft of the EA/RIR/IRFA analysis was made available for public comment on October 28, 1987 (52 FR 41485) and comments were invited until November 27, 1987. The Council received additional public comments at its December 1987 meeting. The analysis was subsequently redrafted and submitted for Secretarial review on January 11, 1988 at which time it was available for additional public review until the end of the comment period on the proposed rule on April 14, 1988.

Comment: Three commenters expressed the opinion that the Council procedure under which the proposed regulations for Areas 4C and 4E were developed was flawed because of insufficient scientific review by the SSC.

Response: A notice of availability and request for comments on a draft of the EA/RIR/IRFA analysis was published in the Federal Register on October 28, 1987 (52 FR 41485). However, the minutes of the December 1987 Council meeting indicate that the SSC did not comment on the EA/RIR/IRFA analysis due to inadequate review time. The minutes indicate also that this constraint did not prevent the AP and nine individuals and organization representatives, including scientific staff of the IPHC, from commenting on the alternatives and the analysis before the Council voted on its Pacific halibut fishery regulatory recommendations to the Secretary. The SSC's failure to comment, while regrettable, does not prevent adoption of the rule.

Comment: Two comments were indirectly related to the proposed rule. They expressed concern that requests to the Council for allocative regulations benefiting local fishermen from Atka, Alaska in Regulatory Area 4B were denied by the Council. Subsequent similar requests to the IPHC also were denied. The commenters requested clarification on which was the proper management authority to receive their request for allocative regulations.

Response: The original proposal of the Atka Fishermen's Association

(Association) requested an exclusive registration area within Regulatory Area 4B. This proposal was correctly submitted to the Council because of the purely economic allocative benefits being sought. When the Association submitted a similar proposal to the IPHC, it was deferred to the Council as being principally within their purview. The Association's confusion is unfortunate. The following background may be helpful to eliminate that confusion in the future.

Although Regional Fishery Management Councils were provided authority to develop allocative regulations governing United States halibut fishermen under the Halibut Act of 1982, all halibut fishery regulations were developed by the IPHC through 1987. After reviewing comments made by the Fishing Vessel Owners Association of Seattle, Washington, and reviewing the fishery management system, NOAA decided that the Council process provided more opportunity for public involvement and was the better forum for deciding halibut allocation issues. In 1987, therefore, the NOAA Administrator requested the appropriate Regional Fishery Management Councils to address halibut allocation issues rather than the IPHC.

The Council chose to develop regulations which would have the same allocative effect in Regulatory Areas 4C and 4E as did 1987 halibut fishery regulations developed by the IPHC. The Council made this choice after considering 73 regulatory proposals, including the Association's, and hearing recommendations of the public and Council advisory bodies. A principal difference between the Council's action regarding Regulatory Areas 4C and 4E and the Association's proposal for 4B is that the Council considered, but chose not to develop, allocative measures for areas not previously affected by such measures.

Comment: One comment expressed gratitude for the Council's decisions regarding Regulatory Areas 4C and 4E. The commenter claimed that without the allocative measures recommended by the Council, local fishermen in these areas using relatively small vessels (32 feet in length or less) would have a disadvantage in capturing their fair share of the 4C and 4E Pacific halibut catch limits in competition with larger fishing vessels. A future limited entry or a quota share system based on past participation would be difficult for local fishermen to accept unless they have a fair opportunity to fish competitively against the non-local fleet.

Response: The comment is noted with the observation that deletion of the 80-percent provision for Area 4E in the final rule is not likely to affect the overall distribution of the halibut catch among local and non-local fishermen in that area.

Changes from the Proposed Rule in the Final Rule

The Assistant Administrator for Fisheries, NOAA, on belalf of the IPHC, published a notice of regulations promulgated by the IPHC and approved by the United States Government to govern U.S. fishermen fishing for Pacific halibut on April 1, 1988 (53 FR 10536). For reasons set out in the preamble of that notice, certain changes were made in the numbering and heading of sections of 50 CFR Part 301. Hence, section numbering and headings in the regulatory text of this final rule are different from the proposed rule (53 FR 8938, March 18, 1988) as follows:

Proposed as:

§ 301.9 Trip limits
§ 301.12 Vessel clearance and hold inspection
§ 301.15 Fishing gear.

Final rule codified as:

§ 301.10 Fishing period limits
§ 301.13 Vessel clearance and hold inspection
§ 301.16 Fishing gear.

Also, several other changes from the proposed rule to the final rule are necessary because the 1983 IPHC regulations were published before this final rulemaking. Regulatory text for § 301.9 (a) and (b) in the proposed rule has been changed to § 301.10 (b) and (c), respectively, in this final rule. The reference to § 301.8(a) within the regulatory text of § 301.9(a) in the proposed rule has been changed to § 301.9(a) within the regulatory text of § 301.10(b) of the final rule. Within § 301.13 of this final rule which was § 301.12 of the proposed rule, the following changes have been made: (1) New paragraphs (d) and (f) are added to agree with regulations published on April 1 (53 FR 10536), and (2) § 301.12(d) has been changed to § 301.13(e), § 301.12(e) is changed to § 301.13(g), § 301.12(f) is changed to § 301.13(h), § 301.12(g) is changed to § 301.13(i), and § 301.13(h) is changed to § 301.13(j). The reference to § 301.7 within § 301.12(a) of the proposed rule is changed accordingly to § 301.8 within § 301.13(a) of this final rule. The reference to § 301.7 within § 301.12(c) of the proposed rule is changed to § 301.8 within § 301.13(c) of this final rule. The reference to § 301.4 (h) and (j) within § 301.15(h) of the proposed rule is changed to § 301.5 (h) and (j) within § 301.16(h) of this final rule.

Classification

This rule is published under section 5(c) of the Halibut Act and is implemented with the approval of the Secretary who has determined that it is consistent with the Halibut Act and other applicable law.

The Council prepared an environmental assessment in combination with a regulatory impact review and initial regulatory flexibility analysis for this regulatory amendment. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA/RIR/IRFA may be obtained from the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA. Based on the same document, the Under Secretary also concluded that this rule may have significant effects on small entities. Virtually no economic effect of this action is anticipated relative to 1987 because the rule is specifically designed to maintain and assure the same relative distribution of the halibut harvest as in 1987 among fishermen who land their total annual halibut catch in Regulatory Areas 4C and 4E (i.e. local fishermen). However, compared to no action, this rule is anticipated to have the effect of shifting halibut fishing revenues to local fishermen in Regulatory Areas 4C and 4E from non-local fishermen who otherwise could have had larger halibut catches in these areas. This allocation will provide competitive advantages to local fishermen who operate small vessels more limited by severe weather conditions than non-local fishermen. Although non-local fishermen are expected to harvest a smaller proportion of the halibut catch limits for these areas than they would without this action, these fishermen have the capability to fish in other areas not subject to the allocation measures with larger vessels that can operate in a variety of weather conditions.

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for

review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator for Fisheries, NOAA, finds that because the first open fishing period in Regulatory Area 4E begins on June 1, 1988 and the allocative aspects of the existing halibut fishing regulations would be infirm without the provisions of this final rule in place at that time, and because this action already has received ample public review and comment, it is impracticable and contrary to the public interest to delay for 30 days the effective date of these regulations under the provision of section 553(d) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: May 27, 1988

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

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

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

2. Section 301.10 is amended by adding paragraphs (b) and (c) to read as follows:

§ 301.10 Fishing period limits.

* * * * *

(b) Vessels fishing in Area 4C will be limited to a maximum catch of 10,000 pounds of halibut per fishing period until 50 percent of the catch limit for Area 4C specified in § 301.8 (a) of this part has been taken, and thereafter will be limited to a maximum catch of 20,000 pounds of halibut per fishing period.

(c) Vessels fishing in Area 4E will be limited to a maximum catch of 6,000 pounds of halibut per fishing period.

3. In § 301.13, paragraphs (a), (b), (c), (e), (g), (h), (i) and (j) are repromulgated (republished) without change as follows:

§ 301.13 Vessel clearance and hold inspection.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.8 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut within Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.8 of this part may fish for halibut within Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

* * * * *

(e) The vessel clearance and hold inspections required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

* * * * *

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 will be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) No halibut may be on board at the time of inspection required by paragraph (g) of this section.

(i) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 may be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(j) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

4. In § 301.16, paragraph (h) is repromulgated (republished) without change as follows:

§ 301.16 Fishing gear.

* * * * *

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period will not apply to persons and vessels fishing for halibut during the fishing periods in Areas 4C and 4E as described in § 301.5 (h) and (j) of this part.

* * * * *

[FR Doc. 88–12556 Filed 5–31–88; 5:02 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 107
Friday, June 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

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 21; Doc. No. 4931S]

General Crop Insurance Regulations; Frost/Freeze Potato Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section, 7 CFR 401.130, to be known as the Frost/Freeze Potato Option. The intended effect of this rule is to provide the regulations containing the provisions for frost/freeze crop insurance protection on potatoes as an option to the Potato Crop Insurance endorsement (7 CFR 401.128).

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 5, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.130, the Frost/Freeze Potato Option, effective for the 1989 and succeeding crop years, to provide the provisions for insuring potatoes against damage from frost or freeze.

The frost freeze option is a new program for 1989 crop year. It is a modification of the frost/freeze chart used in conjunction with the 1986 loss adjustment procedures. Effective for the 1989 crop year, the frost/freeze provisions will be applicable to the Northern Potato Endorsement, proposed to be added to the General Crop Insurance Regulations (7 CFR Part 401), as 7 CFR 401.128.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Frost/freeze potato option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.130 Frost/Freeze Potato Option, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.130 Frost/Freeze Potato Option.

The provisions of the Frost/Freeze Potato Option for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Frost/Freeze Potato Option

Upon our approval this amendment is applicable only for the _____ crop year.

1. You must have a Federal Crop Insurance General Policy and Potato Endorsement in force. The Endorsement provides guaranteed production on a hundredweight (cwt.) basis only.

2. You must submit a signed Frost/Freeze Option Amendment to us on or before the final date for accepting applications each crop year. Failure to submit a Frost/Freeze Option for each crop year will result in your potatoes being insured under the terms and conditions of the General Policy and Endorsement without the provision of the option.

3. If you elect this option, all acreage of potatoes insured under the General Policy and Potato Endorsement must be insured under this option.

4. In lieu of subsection 7b. of the Endorsement, the mature production (cwt.) to

count for a unit damaged by frost or freeze will be adjusted according to the following chart:

Percent damage due to frost or freeze	Percent production to count
0–5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production will then be counted against your production guarantee to determine the amount of loss. We must be allowed to inspect the production prior to harvest in order to determine the amount of frost or freeze damage.

If the frost or freeze damage is 20 percent or more at the time of harvest and we give you permission, you may destroy the crop and it will be considered a total loss. You will be indemnified accordingly. You may, however, also elect to market or store the crop and apply the total harvested production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day we determine the potatoes to be 20 percent or more frost or freeze damaged.

Done in Washington, DC on May 25, 1988.

John Marshall,

Manager Federal Crop Insurance Corporation.

[FR Doc. 88–12543 filed 6–2–88; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amdt. No. 27; Doc. No. 5549S]

General Crop Insurance Regulations; Malting Barley Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401) to revise and reissue the Malting Barley Option (7 CFR 401.135), effective for the 1989 crop year. The intended effect of this rule is to provide that: (1) Acceptable sales records of malting barley varieties may be substituted for a malting barley contract in obtaining a malting barley option; (2) matling barley units, in accordance with provisions of the barley endorsement, will be allowed; (3) if this option is elected, *all* barley acreage planted to any approved malting variety must be insured under this option; (4) the malting barley price election used to determine liability and indemnity will be contained on the actuarial table; (5) production to count will include all harvested and appraised production accepted by a buyer or meeting applicable malting barley standards provided in the option; (7) quality adjustment determinations for mature malting barley production will be based on a comparison of the malting barley price election to the local market value for the local market value for No. 2 basic barley if the damaged malting barley grades higher than the endorsement standards, or if not, the value of such basic barley of similar quality; and (8) the date for contract changes will be September 1.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 5, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Additional minor editorial changes have been to improve compatibility with the General Crop Insurance Policy. These changes do not affect the meaning or intent of such provisions. The principal proposed changes in the Malting Barley Option are:

1. A malting barley contract is no longer essential to obtain the option. Acceptable records of the sale of malting varieties for malting purposes may be used as a substitute.

2. Multiple malting barley units according to the provisions of the barley endorsement will be allowed.

3. If this option is chosen, then all barley acreage planted to any approved malting variety must be insured under this option. All other barley will be insured as basic barley under the endorsement.

4. The malting barley price election (only 1) used in determining liability and indemnities will be contained on the actuarial table.

5. Production to count will include all harvested and appraised production which is accepted by a buyer or meets applicable malting barley standards provided in the option.

6. Quality adjustment determinations for mature malting barley production will be based on a comparison of the malting barley price election to the local market value for No. 2 non-malting barley if the damaged malting barley grades higher than the basic barley endorsement standards, or if the damaged malting barley does not grade higher than the endorsement standards, the value of such non-malting barley of similar quality.

7. Several new definitions have been added while others have been revised.

8. The date by which changes to the option are to be available in the service office is now included in the option.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the Federal Register. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Malting barley option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), to revise and reissue the Malting Barley Option (7 CFR 401.135), proposed to be effective for the 1989 and succeeding crop years, as follows

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to revise and reissue the Malting Barley Option, (7 CFR 401.135) effective for the 1989 and succeeding crop years, to read as follows:

§ 401.135 Malting Barley Option.

The provisions of the Malting Barley Option for the 1989 and subsequent crop years are as follows:

United States Department of Agriculture, Federal Crop Insurance Corporation, Barley Insurance Malting, Barley Option

(This is a continous Option. Refer to Section 15 of the General Crop Insurance Policy)

Insured's Name
Contract No.

Crop Year

Address
Identification No.

SSN

Tax

It is hereby agreed to amend the Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement under, and in accordance with, the following terms and conditions:

1. The option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this option.

2. You must have a Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement ("Basic Policy") in force.

3. You must provide by the acreage reporting date:

a. Acceptable records of the sale of malting barley for malting purposes for 3 of the previous 5 crop years; or

b. A binding written contract with a buyer of malting barley for malting purposes, which states the quantity contracted and purchase price or method for determining such price.

4. All barley acreage in the county planted to an approved malting variety in which you have a share, will be insured under this option ("Malting Barley"). All barley acreage of any non-malting variety will be insured under the terms of the Basic Policy ("Basic Barley"). Malting barley and basic barley acreage will be separate units. Further unit division may be allowed in accordance with the provisions of the basic policy.

5. You must elect the highest price election provided for basic barley.

6. Your premium rate for malting barley will be provided by the actuarial table.

7. In lieu of Section 7.b.(1) and (2) of the Barley Endorsement:

a. Mature malting barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each one tenth (.1) percentage point of moisture in excess of 13.0 percent; or

b. Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley (see 10.c.), will be adjusted by:

(1) Dividing the value per bushel for the insured malting barley (see 10.d.) by the price election for malting barley; and

(2) Multiplying the result (not to exceed one (1.0)) by the number of bushels of such barley.

c. All grade determinations must be made by a grader licensed to grade barley under the United States Grain Standards Act from samples obtained by a licensed sampler or our loss adjuster. Any production which is not sampled and graded as provided by this section will be considered as malting barley meeting the applicable standards.

8. All provisions of the basic policy not in conflict with this option are applicable.

9. Contract changes will be available at your service office by September 1 preceding the cancellation notice.

10. As used in this option:

a. *"Applicable standards"* for two-rowed and six-rowed malting barley are defined in the Official United States Grain Standards.

b. *"Approved malting variety"* means the varieties specified in the actuarial table or approved in writing by us.

c. *"Buyer"* means any business enterprise regularly engaged in the malting of barley or brewing of malt beverages for human consumption, or its representative which is authorized to engage in the purchase of malting barley on behalf of or for sale to the malting or brewing company.

d. *"Value per bushel"* for the insured malting barley means:

(1) The local market price of U.S. No. 2 barley (basic barley) if the insured mature malting barley production, due to insurable causes, has a test weight of greater than 40 pounds per bushel and, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains: more than 85 percent sound barley; less than 8 percent damaged kernels, less than 35 percent thin barley; less than 5 percent black barley; and does not grade smutty, garlicky, or ergoty; or

(2) The local market price of basic barley of the same quality as the insured malting barley, if such malting barely does not meet all the standards in 10.d.(1).

The local market price for basic barley as identified in 10.d.(1) and (2) above will be the price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

e. *"Injured-by-frost/mold kernels"* means kernel damage by frost or mold up to and including .4 percent.

f. *"Front/mold-damaged kernels"* means frost/mold damage kernels in excess of .4 percent.

Insured's Signature

Date

Corporation Representative's Signature and Code Number

Date

Done in Washington, DC on May 10, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–12544 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amdt. No. 23; Doc. No. 4942S]

General Crop Insurance Regulations; Quality Potato Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section 7 CFR 401.132, to be known as the Quality Potato Option. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on potato quality as an option to the Northern Potato Endorsement (7 CFR 401.128).

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 5, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.132, the Quality Potato Option, effective for the 1989 and succeeding crop years, to provide the provisions for insuring potatoes against loss of quality.

Upon publication of 7 CFR 401.132 as a final rule, the provisions for insuring potatoes contained therein will be applicable to the Northern Potato Endorsement to be issued as 7 CFR 401.128.

The Quality Potato Option provisions contained herein are a combination of the provisions for coverage against frost/freeze and loss of quality and will be applied against mature production (hundredweight) (cwt.) to count under both reduction methods.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Quality potato option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.132 Quality Potato Option, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.132 Quality Potato Option.

The provisions of the Quality Potato Option for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Quality Potato Option

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

Upon our approval this amendment is applicable for the _____ crop year.

1. You must have a Federal Crop Insurance Potato Endorsement in force. The Endorsement provides guaranteed production on a hundredweight (cwt.) basis only.

2. You must submit a signed Quality Potato Option to us on or before the final date for accepting applications each crop year. Failure to submit a Quality Potato Option for each crop year will result in your potatoes being insured under the terms and conditions of the General Policy and Endorsement without the provisions of the Option.

3. If you elect this Option, all acreage of potatoes insured under the General Policy and Potato Endorsement must be insured under this amendment.

4. In lieu of subsection 7.b. of the Endorsement, the mature production (cwt.) to count for a unit will be based on the following reduction method that results in the least production to count:

a. The potato crop will be adjusted for frost or freeze damage according to the following chart:

Percent damage due to frost or freeze	Percent production to count
0–5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production will then be counted against your production guarantee to determine the amount of loss. We must be allowed to inspect the production prior to harvest in order to determine the amount of frost or freeze damage.

If the frost or freeze damage is 20 percent or more at the time of harvest and we give you permission, you may destroy the crop and it will be considered a total loss. You will be indemnified accordingly. You may, however, elect to market or store the crop and apply the total harvest production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day we determine the potatoes to be 20 percent or more frost or freeze damaged; or

b. Include all harvested and appraised production as follows:

(1) The production to count for any unharvested appraised mature production will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of such potatoes.

(2) The production to count for any potatoes stored:

(a) Without an acceptable inspection will be 100 percent of the gross weight of these potatoes; or

(b) With an acceptable inspection will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of stored potatoes.

(3) Any sold production which due to insurable causes, contains a portion of potatoes which grade less than U.S. No. 2 [1] will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the hundredweight of sold potatoes.

5. Your premium rate for quality potatoes will be set by the Actuarial Table.

6. *"Percentage factor"* means the actual average percentage of potatoes grading U.S. No. 2 [1] or better, determined from your records. If more than four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained on the actuarial table. The Actuarial Table may provide for percentage factors by type.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

Done in Washington, DC on May 25, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-12545 Filed 6-2-88; 8:45am]

BILLING CODE 3410-08-M

[1] The actuarial table may provide U.S. No. 1.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Eighth Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Eighth Meeting.

SUMMARY: The Nuclear Regulatory Commission will hold the eighth meeting of the High-Level Waste Licensing Support System Advisory Committee on June 29–30, 1988. The Committee, established under the Federal Advisory Committee Act, is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). The Committee is attempting to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding.

DATE: The eighth meeting of the HLW Licensing Support System Advisory Committee will be held June 29–30, 1988.

ADDRESS: The location of the June 29–30, 1988, meeting of the HLW Licensing Support System Advisory Committee is the Best Western Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publication Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: The eighth meeting of the HLW Licensing Support System Advisory Committee ("negotiating committee") is scheduled to include continued discussion of substantive issues related to a high-level waste licensing support system.

Dated at Bethesda, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

David L. Mayer,

Division of Freedom of Information and Publication Services, Office of Administration and Resources Management.

[FR Doc. 88-12486 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175, 176, 177, and 178

[Docket No. 80N-0428]

Colorants for Polymers; Postponement of Final Date for Submission of Environmental Data and Additional Comments

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the final date for the submission of comments on the tentative final rule on colorants for polymers. The new date is August 5, 1988. This action responds to requests by several manufacturers for additional time to compile the requested environmental data and to prepare comments.

DATE: The new final date for the submission of comments and environmental data in this proceeding is August 5, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 6, 1988 (53 FR 11402), FDA published a tentative final rule on the safe use of substances as colorants for polymers. In this tentative final rule, the agency requested information for use in assessing the environmental impact of expanded use of certain of these colorants and of certain listed color additives as colorants. The agency established June 6, 1988, as the final date for submission of comments and environmental data.

The agency received several comments that requested a postponement of that final date. The comments indicated that compiling the information that FDA had requested would take longer than the original final date of June 6, 1988, and the comments requested extensions that ranged from 30 to 60 days.

To ensure that respondents have a full opportunity to provide the agency with the information it needs, the agency is postponing the date for the submission of comments and environmental data on colorants for polymers until August 5, 1988.

Dated: May 27, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12459 Filed 6-2-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

Preparation of Rolls of Indians

March 4, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend the regulations contained in 25 CFR Part 61 governing the preparation of rolls of Indians. The Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987 directs the

Secretary of the Interior to prepare within 365 days of the date of the Act a tribal membership roll in accordance with the regulations contained in 25 CFR Part 61. The regulations in Part 61 provide general enrollment procedures that can be made applicable to the preparation of a specific roll of Indians by amending the regulations to include the qualifications for enrollment and the deadline for filing applications for the particular roll. The BIA is proposing to amend Part 61 by adding a paragraph (e) to § 61.4 to include the qualifications for enrollment and the deadline for filing applications so that the procedures contained in Part 61 will govern the preparation of the tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians.

DATE: Comments must be received on or before July 5, 1988.

ADDRESS: Written comments should be directed to the Branch of Tribal Enrollment Services, Bureau of Indian Affairs, Room 2609 Main Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Slover, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs, Room 2609 Main Interior Building, 1951 Constitution Avenue NW., Washington, DC 20245, telephone number: (202) 343–1702 (FTS: 343–1702).

SUPPLEMENTARY INFORMATION: This proposed amendment to a rule is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

The Cow Creek Band of Umpqua Tribe of Indians was awarded judgment funds in docket numbered 53–81L by the United States Claims Court. Funds to satisfy the award were appropriated by Congress. The Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100–139, authorized the use and distribution of the judgment funds.

Section 5 of the Act of October 26, 1987, directs the Secretary to prepare within 365 days of the date of the Act a tribal membership roll of the Cow Creek Band of umpqua Tribe of Indians in accordance with the regulations contained in 25 CFR Part 61. The Act further directs that the tribal membership roll by published in the **Federal Register.**

Section 6 of the Act of October 26, 1987, directs the Secretary to determine the eligibility of two additional categories of individuals who do not qualify for tribal membership, but who do meet certain other requirements specified in the Act. These nontribal members will be eligible to participate along with tribal members in certain tribal programs funded by the judgment award. The BIA will use the procedures contained in this part 61 to process applications from these two additional categories of nontribal members. However, the rulemaking action amending Part 61 to provide procedures to process applications from these nontribal members under section 6 of the Act was determined to be a rule of agency procedure or practice and was being published separately as a final rule in this issue of the **Federal Register** on Wednesday, April 6, 1988. 53 FR 11271.

Section 5 of the Act of October 26, 1987, states that the Secretary is to prepare a tribal membership roll comprised of "Indian individuals" who were not members of any other federally recognized Indian tribe on July 30, 1987, and (1) who are named on a tribal roll dated September 13, 1980 (the so-called Interrogatory No. 14 roll); (2) who were born on or prior to October 26, 1987, and are descendants of persons named on the so-called Interrogatory No. 14 roll; or (3) who are decendants of persons considered to be members of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 19, 1853. The enrollment requirements stated in the Act are ambiguous. Controversy has arisen as to whether person named on the so-called Interrogatory No. 14 roll automatically qualify for enrollment on the tribal membership roll being prepared by the Secretary and can be denied enrollment only if the BIA can prove that they are nonIndians or whether those persons must prove Cow Creek Indian ancestry to be included on the tribal membership roll.

The Department has concluded, based on a review of the legislative history and consistent with the scope and purpose of the Act, that all individuals, including those persons whose names appear on the so-called Interrogatory No. 14 roll, must establish that they possess Cow Creek Indian ancestry to qualify for enrollment on the tribal membership roll being prepared by the Secretary. An early version of the proposed legislation did contain specific language granting a "rebuttable presumption" of eligibility for those persons whose names were listed on the so-called Interrogatory No. 14 roll, but that provision was removed from the legislation as enacted. Consequently, among other requirements for enrollment, the proposed amendment requires all persons to establish that they possess Cow Creek Indian ancestry.

To establish eligibility for enrollment the proposed amendment requires all persons to file or have filed on their behalf an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, by the deadline specified in proposed § 61.4(e)(2). Applications received after that date will be rejected for failure to file on time regardless of whether the applicants otherwise meet the qualifications for enrollment.

In addition to general public notice, to provide actual notice of the preparation of the roll to as many potentially eligible beneficiaries as possible, the Superintendent, Siletz Agency, Bureau of Indian Affairs, shall send notices in accordance with § 61.5(c) to all persons whose names appear on the Interrogatory No. 14 roll at their last available address. Notices shall advise individuals of the preparation of the roll and the relevant procedures to be followed, including the qualifications for enrollment and the deadline for filing applications forms. An application form will be mailed with each notice.

The primary author of this document is Kathleen L. Slover, Tribal Enrollment Specialist, Branch of Tribal Enrollment Services, Bureau of Indian Affairs.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed amendment.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in this Part 61 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected and those individuals who are determined eligible to be enrolled on the tribal membership roll will be participating in the programs of one tribal entity funded by a relatively small judgment award granted the Cow Creek Band by the United States Claims Court.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the limited applicability as stated above.

The Department of the Interior has determined that this rule is not a major Federal action signficantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 25 CFR Part 61

Indians—claims, Indians—enrollment.

Accordingly, it is proposed that Part 61 of Subchapter F of Chapter I of Title 25 of the Code of Federal Regulations be amended as shown.

PART 61—[AMENDED]

1. Authority citation for Part 61 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; Pub. L. 93–134, 87 Stat. 466, as amended (25 U.S.C. 1401 *et seq.*); Pub. L. 100–139.

2. Section 61.4 is amended by adding a new paragraph (e) to read as follows:

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

* * * * *

(e) *Cow Creek Band of Umpqua Tribe of Indians.* (1) Pursuant to section 5 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100–139, a tribal membership roll is to be prepared comprised of all persons who are able to establish that they are of Cow Creek Indian ancestry based on any rolls or records acceptable to the Secretary and were not members of any other federally recognized Indian tribe on July 30, 1987; and:

(i) Who are named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll;

(ii) Who are descendants of individuals named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll, and were born on or prior to October 26, 1987; or

(iii) Who are descendants of individuals who were considered to be members of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the Treaty entered between such Band and the United States on September 19, 1853.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380 by August 2, 1988. Applications forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

* * * * *

Ralph R. Reeser,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–12499 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–962–86]

Income Taxes; Definition of Functional Currency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the definition of a taxpayer's functional currency. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986.

DATES: The regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by August 2, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–962–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 Attention: CC:LR:T (INTL–962–86) (202–634–5406), not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.985–0T through 1.985–5T to Part 1 of Title 26 of the Code of Federal Regulations. Final regulations are by this document proposed to the basis of the temporary regulations. Section 985 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2090). For the text of the temporary regulations, see FR Doc. 88–12562 [T.D. 8208]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Non-Applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefor is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal authors of these proposed regulations are David Rosenberg and F. Scott Farmer of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

Paperwork Reduction Act

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Comments and Requests for a Public Hearing

Before these temporary and proposed regulations are adopted as final regulations, consideration will be given any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held,

notice of the time and place will be published in the **Federal Register**.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary regulations, FR Doc. 88–12562 [T.D. 8208] published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under section 989 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–12563 Filed 6–2–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Reopening and Extension of Public Comment Period; Proposed Amendments; Louisiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: By letter dated January 25, 1988, the State of Louisiana submitted proposed amendments to its permanent regulatory program (hereinafter referred to as the Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revisions to the Louisiana regulations which would partially replace those regulations now implementing the Louisiana program. OSMRE published a notice in the March 14, 1988 **Federal Register** (53 FR 8222) announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments.

In response to comments received in the State rulemaking process, the State submitted revised amendments on March 8, 1988; April 5, 1988; and May 11, 1988. Accordingly, OSMRE is reopening and extending the comment period for Louisiana's January 25, 1986 proposed amendments as modified on March 8, 1988; April 5, 1988; and May 11, 1988. This action is being taken to provide the public with an opportunity to consider the adequacy of the revised proposed amendments.

DATES: Written comments, relating to Louisiana's proposed modification of its program not received on or before 4:00 p.m., c.s.t. on June 20, 1988, will not necessarily be considered in the Director's decision to approve or disapprove the amendments.

ADDRESSES: Written comments should be mailed or hand delivered to: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581–6430.

Copies of the Louisiana program, the proposed modification to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, listed above, at OSMRE Headquarters Office, and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive free of charge, one copy of the proposed amendment by contacting OSMRE's Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 "L" Street NW., Washington, DC 20240; Telephone: (202) 343–5492.

Louisiana Office of Conservation, Department of Natural Resources, P.O. Box 94275, Baton Rouge, Louisiana 70804; Telephone: (504) 342–5500.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Louisiana program was conditionally approved by the Secretary of the Interior on October 10, 1980. Information pertinent to the general background, revisions, modifications, and amendments to the Louisiana program submission as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions taken with regard to Louisiana's approved program amendments and required amendments can be found at 30 CFR Part 918.10, 918.16, and 918.20.

II. Proposed Amendments

By letter dated January 25, 1988, (Administrative Record No. LA–263), Louisiana submitted a package of proposed amendments to OSMRE. The amendments consist of proposed modifications to Louisiana regulations concerning numerous aspects of the Louisiana program. OSMRE announced receipt of the proposed amendments and initiated a 30-day public comment period on March 14, 1988 (53 FR 8222). The comment period closed on April 13, 1988.

By letters dated March 8, 1988 (Administrative Record No. LA–269), April 5, 1988 (Administrative Record No. LA–270), and May 11, 1988 (Administrative Record No. LA–271), Louisiana submitted revised amendments to resolve concerns raised in the Louisiana rule development process. The full text of the revised amendment package is available for review at the locations listed above under **"ADDRESSES"**. OSMRE is now seeking comment on the March 8, 1988; April 5, 1988; and May 11, 1988 proposed amendments. If the Director determines that the proposed amendments are no less stringent than SMCRA and no less effective than the Federal regulations, the amendments will be approved and become part of the approved regulatory program for the State of Louisiana.

List of Subjects in 30 CFR Part 918

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: May 20, 1988.

[FR Doc. 88–12471 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 944

Proposed Amendments to Utah's Permanent Regulatory Program; Reopening and Extension of Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSMRE is reopening the public comment period on the substantive adequacy of an amendment submitted by the State of Utah to change the rule governing the determination of

the existence of negligible impact to alluvial valley floors from mining activities. OSMRE published a notice in the **Federal Register** on November 13, 1987 (52 FR 43622) to announce the opportunity for public comment and hearing. The comment period closed December 14, 1987. During its review of Utah's proposed amendments, OSMRE identified some concerns relating to the length of time for which the significance of impacts of mining to farm production on alluvial valley floors should be considered. OSMRE notified Utah of these concerns, and Utah responded by revising its proposed amendment.

OSMRE is now reopening the comment period to allow the public to comment on the additional material received.

DATES: Written comments realting to Utah's proposed modifications of its program not received by 4 p.m., m.d.t. on June 20, 1988 will not necessarily be considered in the Director's decision to approve or disapprove the amendments.

ADDRESSES: Written comments may be mailed or hand-delivered to Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102.

Copies of the Utah program, the proposed amendments to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, 8 a.m. to 4 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed herein under the heading "**ADDRESSES.**" The aforementioned documents are available for review at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102, Telephone (505) 766–1486

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagan, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102 Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Utah program under the Surface Mining Control and Reclamation Act (SMCRA) for the regulation of surface coal mining operations on January 21, 1981. Information pertinent to the general background and revisions to the proposed 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 Utah program, can be found in the January 21, 1981 **Federal Register** (46 FR 5889). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 944.12, 944.15, and 944.16.

II. Submission of Amendments and Discussion of Alluvial Valley Floor Issue

On September 24, 1987, Utah submitted a proposed amendment to the Utah program (Administrative Record No. UT–462) for OSMRE's review and approval. The proposed amendments at SMC/UMC 785.19(e)(2) would delete the last sentence of subsection (e)(2) which states, "The effect of the proposed operations on farming will be concluded to be significant if they would remove from production, over the life of the mine, a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm."

The proposed rule change was announced in the **Federal Register** on November 13, 1987 (52 FR 43622). This public notice (Administrative Record No. UT–476) announced the opportunity for the public to submit comments concerning the proposed amendment to the Utah Program.

In the course of its review of Utah's proposed amendments, OSMRE determined that the current Federal Permanent Program rules require that impacts on alluvial valley floors be based on the life-of-mine period.

Because Utah had deleted this life-of-mine criterion from its proposed amendments, OSMRE sent an issue letter (Administrative Record No. UT–481) to Utah on March 7, 1988, notifying Utah that its proposed regulations were not as effective as the counterpart Federal Regulations. Utah responded on April 6, 1988 (Administrative Record No. UT–483) by adding the life-of-mine timeframe to the proposed amendment.

The full text of the proposed program amendment submitted by Utah is available for public inspection at the locations listed under "**ADDRESSES,**" or a copy of the proposed amendment can be obtained as described under the same section.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Utah satisfies the requirements of 30 CFR 732.15 for approval of State program amendments. If the amendment is deemed adequate, it will become part of the Utah program.

Written comments should be specific, pertain only to the issues 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 the Albuquerque Field Office will not necessarily be considered in the final rulemaking decisions process or included in the Administrative Record for this proposed rulemaking.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 20, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–12465 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162 and 165

[CGD 05–88–17]

Special Anchorage Areas, Anchorage Grounds, and Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to completely revise the anchorage regulations in 33 CFR 110.168 and the regulated navigation area (RNA) regulations in 33 CFR 165.501 for Hampton Roads, Virginia. Our actions are intended to promote safe navigation in Hampton Roads by revising the present anchorage boundaries to conform with present navigational conditions, establishing new boundaries for the regulated navigation area, and clarifying the general provisions for both

the anchorage grounds and the regulated navigation area. The need for revision to the anchorage ground regulations stems primarily from several construction and navigation improvement projects that have been completed, are in progress, or are planned for Hampton Roads. The need for revision to the regulated navigation area regulations stems from a regulatory project being undertaken by Coast Guard Headquarters that will revise all of the Coast Guard's anchorage regulations, and separate out those regulations that regulate vessel operations outside of specified anchorage grounds. Those provisions not related to specific anchorage grounds are being moved to Part 165. In addition to many substantative changes, we intend to remove out-dated and confusing language, redesignate anchorages in a consecutive manner, and make the regulations easier to understand.

DATES: Comments must be received on or before July 18, 1988.

ADDRESSES: Comments should be mailed to Commander (mpv), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23704–5004. Comments will be available for inspection and copying at the office of the Commander (mpv), Fifth Coast Guard District, Room 408–A, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23704–5004. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address. Charts with the revised anchorage areas highlighted are available for viewing at the above office.

FOR FURTHER INFORMATION CONTACT: Lieutenant D.T. Ormes, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth Virginia, 23704–5004, (804) 398–6388.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking was published in the **Federal Register** on March 22, 1984 (49 FR 10678). Five comments were received in response to that notice.

Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD5 88–17) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information: The drafters of this notice are Lieutenant W.J. Wetzel and Lieutenant D.T. Ormes, Project Officers, Port and Vessel Safety Branch, Fifth Coast Guard District, Lieutenant (jg) Jeff G. Anderson, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, and Commander R.J. Reining, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion: An advance notice of proposed rulemaking, which outlined the proposed changes to the anchorage regulations, was published in the **Federal Register** on March 22, 1984 (49 FR 10678). That notice alerted the public to the need for certain changes in the existing regulations and solicited comments and suggestions from the general public, users of these waters, and interested local and Federal agencies. Five comments were received from the Corps of Engineers and various Navy sources. This notice is based on that input, as well as other needs that have been identified since the advanced notice was published through our regular consultations with maritime interests.

The objective of this proposal is to update the regulations and to make them easier to understand. The proposed changes include redefining the geographic boundaries to which both the anchorage and regulated navigation area regulations apply, revising the explosives anchorage regulations, setting controls on the use of deep-draft anchorages, removing many restrictions that apply to most smaller vessels, relocating the Quarantine Anchorage, redesignating anchorages in a consecutive manner, and clarifying the general regulations.

There are also several construction and improvement projects taking palce in Hampton Roads that necessitate amending or removing some of the present anchorages. The more important of these are the construction of the Interstate 664 bridge-tunnel between Newport News and Suffolk, Virginia, and the deepening and realignment of certain dredged channels in conjunction with the 55-foot channel deepening project. The U.S. Navy has also requested that a new anchorage area be established near Cape Henry for use during military exercises.

Because of the large number of changes that are being proposed, the major changes will be discussed separately. Reference will be made to both the current anchorage designations and the proposed redesignations.

1. *Geographic boundaries.* The present regulations apply generally to the Hampton Roads area, but there are no precisely defined geographic boundaries. The boundaries for the current Regulated Navigation Area (RNA) will be extended to include the entrance to Chesapeake Bay, the lower Chesapeake Bay south of a line between Hampton, Virginia and Cape Charles, Virginia, Hampton Roads proper, the James River east of the Route 17 highway bridge, and the various branches of the Elizabeth River in and around Norfolk, Virginia.

2. *Applicability.* The current anchorage regulations prohibit any vessel within the Hampton Roads area from anchoring outside of a designated anchorage area. This prohibition extends even to the smallest pleasure vessels. Many of the designated anchorages also cover large areas unsuitable for anchoring, either because of the depth of water, obstructions, or underground cables. We propose to eliminate most of the regulations applicable to vessels 65 feet or less in length. Vessels over 65 feet in length and any vessel carrying dangerous cargo or military explosives, as defined in these regulations, will be required to anchor in designated anchorage areas. However, all vessels, including vessels that are 65 feet or less in length, will be prohibited from anchoring in maintained channels and in the vicinity of the bridge-tunnels.

Coast Guard Headquarters is currently working on a regulatory project that will revise all of the anchorage regulations in Part 110 of Title 33, Code of Federal Regulations. That project will transfer the regulations controlling the anchoring of vessels outside of established anchorages from Part 110 to Part 165. In anticipation of that change, we are expanding the current boundaries of the current Hampton Roads RNA and revising those regulations to include restrictions on anchoring vessels outside of designated anchorages. This revision of the Hampton Roads RNA will also include a consolidation of other vessel control measures such as the naval aircraft carrier and liquified petroleum gas ship safety zone regulations.

3. *Deep-draft anchorages.* At the request of the Corps of Engineers we have proposed new restrictions on the

use of the principal deep-draft anchorages. These restrictions are based primarily on vessel length and draft. They also vary depending upon the size, depth, and location of the particular anchorage. Our purpose is to ensure that these anchorages are available for and used only by those vessels that actually require deeper water.

4. *Anchorage F.* Because the U.S. Navy no longer requires this anchorage for mooring explosives laden barges, this anchorage will be discontinued. Those portions of Anchorage F that will not be lost to the I–664 bridge-tunnel will be incorporated into Anchorages I, J, and K.

5. *Explosives Anchorage.* Anchorage F–1 will be discontinued as an explosive anchorage. It will be incorporated into new Anchorage E, a general commercial anchorage. Because we believe there is a need to maintain a separate explosives anchorage for commercial vessels, a new explosives anchorage will be designated at the eastern and of Anchorage E, which is located in lower Chesapeake Bay. This location is accessible to large ships. It is located in a semi-protected area that is removed from populated areas and other anchorages.

6. *Explosives and dangerous cargoes.* This proposal identifies vessels that are required to use the explosives anchorage by defining explosives and other dangerous cargoes in terms consistent with current hazardous material regulations.

7. *Quarantine Anchorage.* The Quarantine Anchorage will be relocated from old Anchorage A to new Anchorage K. At present, this anchorage is seldom used for quarantine purposes. It is a naturally deep and well-located anchorage that is better suited for other purposes. The deep waters in Anchorage F will be used as the primary deep-draft commercial anchorage in Hampton Roads. Moving the Quarantine Anchorage to Anchorage K will still provide vessels with an accessible quarantine anchorage.

8. *Naval Anchorage G (formerly anchorage B).* The proposal adds new requirements for handling of explosives in Anchorage G. New minimum separation distances between explosives-laden vessels and the Navy barge mooring facility, other vessels at anchor, and navigation channels are proposed. This proposal is based on standards set by the Department of Defense for military vessels.

9. *Naval Anchorage A.* At the request of the U.S. Navy, a new anchorage near Cape Henry south of the main ship channel is included in the proposal. This anchorage will be used by military and military support vessels engaged in military exercises at Fort Story.

10. *Anchorage U (formerly Anchorage N–1).* This anchorage is traditionally used by vessels 65 feet or less in length. Because of the scenic location of this anchorage, regulations on its use will continue.

11. *Anchorage R and S (formerly anchorage P).* Since Anchorage P crosses the entry channel to the Pinners Point piers and encompasses area unsuitable for anchoring, it is being divided into two anchorages.

12. *Anchorages G–1, G–2, J–1, J–2, M, Q, S–1 and S–2.* These anchorages are being eliminated, since the principal users, shallow draft vessels, will no longer be required to anchor in designated anchorages. Also, portions of the areas included in these anchorages are unsuitable for anchoring vessels.

13. *Channel realignments.* Dredging activities to deepen and realign Newport News Channel and Norfolk Harbor Entrance Reach require adjustments to the boundaries of Anchorages G, H, J, and K to conform to the new deeper channels. The shift of these channels is minor and has virtually no effect upon the amount of space available for anchoring vessels.

14. *Anchorage T–6.* This anchorage is being eliminated. It was established for vessels involved with the construction of piers at the Norfolk Naval Base, and is no longer needed for that purpose.

15. *Fairway for shallow-draft vessels and tows.* The proposal eliminates the fairway that extends from Norfolk Harbor Reach near buoy "10" to Newport News Channel near buoy "9." This fairway can be better used as an anchorage. Its elimination will not significantly affect the operation of vessels that now use it.

16. *Protection of bridge-tunnels.* The boundaries of the anchorages adjacent to the I–664 bridge-tunnel are being amended so they are no closer than 500 yards to the bridge-tunnel. No vessels will be allowed to anchor within this 500 yard buffer zone. The buffer zone should minimize the possibility of damage to the bridge by vessels in adjacent anchorages that drag their anchors. A similar buffer zone is being created for the Chesapeake Bay Bridge Tunnel.

17. *Redesignation of anchorages.* All of the anchorages have been renamed. The anchorages have been lettered in a consecutive manner starting at the outermost anchorage.

18. *Anchorage permits.* The proposal includes new regulations that allow the Captain of the Port to issue permits to vessels for remaining in an anchorage for extended periods.

19. *Speed limit regulations.* The speed limit regulations governing the Southern Branch of the Elizabeth River and Fishermans Cove (Northwest Branch of Little Creek) in 33 CFR 162.55 and 162.60 have been consolidated into the Regulated Navigation Area regulations.

20. *Aircraft carrier and LPG carrier safety zone regulations.* The safety zone regulations governing the movements on aircraft carriers and LPG carriers in 33 CFR 165.505 and 165.506 have been consolidated into the Regulated Navigation Area regulations. The regulations on aircraft carrier movements have been expanded to cover the movement of other large naval vessels, such as Helicopter Landing Ships, that have limited maneuverability in confined waters.

21. *Thimble Shoal Channel Restrictions.* Due to the large volume of vessel traffic in the lower Chesapeake Bay, the need arose, as a matter of safety, to restrict the use of Thimble Shoal Channel. To meet this need, the Thimble Shoal North and South Auxiliary Channels were designated for use by those vessels with drafts of 25 feet and less. Comments received from the Virginia Pilots Association during Coast Guard analysis indicated a desire to have the limits of Thimble Shoal Auxiliary Channels extended. This proposal enlarges the size of these channels. Vessel safety should be enhanced by this measure. In addition, the Coast Guard's analysis indicated a need to relocate the buoys in Thimble Shoal Channel. (Note: This proposal indicates the locations where the buoys will be located if the proposal is adopted, not current locations of the buoys.)

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. A particular effort has been made to eliminate as many of the current regulations as possible to reduced the burden on commercial and recreational vessel operators. As a result, anchoring in most of the Hampton Roads' area is less restrictive than before; smaller vessels are free to anchor in many more areas than they were previously permitted. The only adverse effect expected from this regulation is the loss of the use of a small portion of the medium and

shallow depth anchorage ground available in Hampton Roads. This results from the construction of the bridge-tunnel. Sufficient anchorage ground will be available for vessels that, in the past, have used the anchorage grounds that will be discontinued. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Waterways.

33 DFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Title 33, Code of Federal Regulations as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.168 of Part 110 is revised to read as follows:

§ 110.168 Hampton Roads, Virginia, and adjacent waters.

(a) *Anchorage Grounds*—(1) *Cape Henry anchorage.* Anchorage A (Naval anchorage): The water enclosed by a line beginning at latitude 36°–55′–33.0″N, longitude 76°–02′47.0W thence to latitude 36°–57′–02.8″N, longitude 76°–03′–02.6″W, thence to latitude 36°–56′–45.0″N, longitude 76°–01–30.0″W, thence to latitude 36°–55′–52.8″N, longitude 76°–01′–37.0″W, thence along the shoreline to the beginning.

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages.—(i) Anchorage B (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–57′–58.0″N, longitude 76°–06′07.0″W, thence to latitude 36°–57′–11.0″N, longitude 76°–03′–02.1″W, thence to latitude 36°–56′–48.8″N, longitude 76°–03′–14.0″W, thence to latitude 36°–56′–31.8″N, longitude 76°–06′–07.0″W, thence to latitude 36°–57′–04.0″N, longitude 76°–06′–07.0″W, thence to latitude 36°–57′–08.5″N, longitude 76°–06′–24.5″W, thence to the beginning.

(ii) *Anchorage C (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–58′–54.8″N, longitude 76°–09′–41.5″W, thence to latitude 36°–59′–15.0″N, longitude 76°–10′–56.8″W, thence to latitude 36°–58′–18.8″N, longitude 76°–10′–54.0″W, thence to latitude 36°–58′–04.0″N, longitude 76°–10′–00.0″W, thence to the beginning.

(iii) *Anchorage D (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–58′–04.0″N, longitude 76°–10′–02.1″W, thence to latitude 36°–57′–31.2″N, longitude 76°–07′–54.8″W, thence to latitude 36°–55′–24.1″N, longitude 76°–10′–28.8″W, thence along the shoreline to latitude 36°–55′–57.1″N, longitude 76°–08′–36.1″W, thence to the beginning.

(iv) *Anchorage E (Explosive Anchorage).* The water enclosed by a line beginning at latitude 36°–59′–58.7″N, longitude 76°–13′–47.0″W, thence to latitude 36°–59′–08.2″N, longitude 76°–10′–33.8″W, thence to latitude 36°–58′–13.0″N, longitude 76°–10′–51.8″W, thence to latitude 36°–59′–02.0″N, longitude 76°–14′–10.2″W, thence to the beginning.

(A) Anchorage Berth E–1 (Explosives Anchorage Berth): The area within a circle having a radius of 500 yards centered at latitude 36°–59′–05.0″N, longitude 76°–11′–23.0″W.

(3) *Hampton Roads Anchorages.*—(i) *Anchorage F, Hampton Bar.* The water enclosed by a line beginning at latitude 36°–59′–51.6″N, longitude 76°–19′–12.0″W, thence to latitude 36°–59′–09.0″N, longitude 76°–18′–51.0″W, thence to latitude 36°–58′–53.6″N, longitude 76°–19′–38.0″W, thence to latitude 36°–59′–25.0″N, longitude 76°–20′–07.0″W, thence to the beginning.

(A) Anchorage Berth F–1—the area within a circle having a radius of 400 yards centered at latitude 36°–59′–13.0″N, longitude 76°–19′–36.5″W.

(B) Anchorage Berth F–2—the area within a circle having a radius of 400 yards centered at latitude 36°–59′–27.5″N, longitude 76°–19′–12.0″W.

(ii) *Anchorage G, Hampton Flats (Naval anchorage).* The water enclosed by a line beginning at latitude 36°–59′–25.0″N, longitude 76°–20′–07.0″W, thence to latitude 36°–58′–53.6″N, longitude 76°–19′–38.0″W, thence to latitude 36°–57′–40.0″N, longitude 76°–21′–16.0″W, thence to latitude 36°–57′–35.5″N, longitude 76°–21′–28.8″W, thence to latitude 36°–57′–34.0″N, longitude 76°–22′–02.2″W, thence to latitude 36°–57′–58.07″N, longitude 76°–22′–03.0″W, thence to latitude 36°–58′–54.8″N, longitude 76°–21′–42.6″W, thence to the beginning.

(A) Anchorage Berth G–1—the area within a circle having a radius of 500 yards centered at latitude 36°–57′–50.0″N, longitude 76°–21′–37.0″W.

(B) Anchorage Berth G–2—the area within a circle having a radius of 500 yards centered at latitude 36°–58′–14.0″N, longitude 76°–21′–01.5″W.

(C) Anchorage Berth G–3—the area within a circle having a radius of 500 yards centered at latitude 36°–58′–34.5″N, longitude 76°–20′–31.0″W.

(D) Anchorage Berth G–4—the area within a circle having a radius of 500 yards centered at latitude 36°–58′–53.4″N, longitude 76°–20′–05.0″W.

(iii) *Anchorage H, Newport News Bar.* The water enclosed by a line beginning at latitude 36°–58′–07.0″N, longitude 76°–22′–03.0″W, thence to latitude 36°–57′–34.0″N, longitude 76°–22′–02.2″W, thence to latitude 36°–57′–23.2″N, longitude 76°–24′–13.5″W, thence to latitude 36°–57′–38.3″N, longitude 76°–24′–20.0″W, thence to latitude 36°–57′–51.8″N, longitude 76°–22′–31.0″W, thence to the beginning.

(4) *James River anchorages.*—(i) *Anchorage I, Newport News.* The water enclosed by a line beginning at latitude 36°–57′–06.0″N, longitude 76°–24′–47.5″W, thence to latitude 36°–56′–22.6″N, longitude 76°–24′–28.0″W, thence to latitude 36°–56′–03.0″N, longitude 76°–24′–37.0″W, thence to latitude 36°–57′–53.7″N, longitude 76°–26′–41.5″W, thence to latitude 36°–58′–23.0″N, longitude 76°–27′–11.0″W, thence to latitude 36°–58′–48.5″N, longitude 76°–27′–11.0″W, thence to latitude 36°–58′–38.0″N, longitude 76°–26′–44.8″W, thence to latitude 36°–57′–50.0″N, longitude 76°–26′–03.8″W, thence to latitude 36°–57′–31.5″N, longitude 76°–25′–39.0″W, thence to the beginning.

(A) Anchorage Berth I–1—the area within a circle having a radius of 400 yards centered at latitude 36°–57′–08.5″N, longitude 76°–25′–21.6″W.

(B) Anchorage Berth I–2—the area within a circle having a radius of 400 yards centered at latitude 36°–57′–22.4″N, longitude 76°–25′–47.7″W.

(ii) *Anchorage J, Newport News Middle Ground.* The water enclosed by a line beginning at latitude 36°–57′–22.1″N, longitude 76°–22′–23.4″W, thence to latitude 36°–56′–46.5″N, longitude 76°–22′–39.3″W, thence to latitude 36°–56′–25.3″N, 76°–23′–48.0″W, thence to 36°–57′–13.1″N, 76°–24′–09.9″W, thence to the beginning.

(iii) *Anchorage K, Newport News Middle Ground.* The water enclosed by a line beginning at latitude 36°–57′–55.0″N, longitude 76°–20′–32.0″W, thence to latitude 36°–57′–08.0″N, longitude 76°–20′–32.2″W, thence to latitude 36°–57′–01.2″N, longitude 76°–20′–22.1″W, thence to latitude 36°–56′–47.4″N, longitude 76°–20′–23.2″W, thence to latitude 36°–56′–00.0″N, longitude 76°–22′–11.7″W, thence to latitude 36°–56′–00.0″N, longitude 76°–24′–00.0″W, thence to latitude 36°–56′–

25.3"N, longitude 76°–23'–48.0"W, thence to latitude 36°–56'–46.5"N, longitude 76°–22'–39.3"W, thence to latitude 36°–57'–22.1"N, longitude 76°–22'–23.4"W, thence to latitude 36°–57'–28.0"N, longitude 76°–21'–11.1"W, thence to the beginning.

(A) Anchorage Berth K–1—The waters enclosed by a line beginning at latitude 36°–57'–55.0"N, longitude 76°–20'–32.0"W, thence to latitude 36°–57'–08.0"N, longitude 76°–20'–32.2"W, thence to latitude 36°–57'–28.0"N, longitude 76°–21'–11.1"W, thence to the beginning.

(B) Anchorage Berth K–2—The waters enclosed by a line beginning at latitude 36°–57'–24.0"N, longitude 76°–22'–01.0"W, thence to latitude 36°–57'–28.0"N, longitude 76°–21'–11.1"W, thence to latitude 36°–57'–16.0"N, longitude 76°–20'–43.2"W, thence to latitude 36°–57'–02.1"N, longitude 76°–21'–09.5"W.

(C) Anchorage Berth K–3 (Quarantine Anchorage)—The area within a circle having a radius of 300 yards centered at latitude 36°–57'–13.2"N, longitude 76°–22'–15.0"W.

(iv) *Anchorage L, Craney Island Flats.* The water enclosed by a line beginning at latitude 36°–56'–47.4"N, longitude 76°–20'–23.3"W, thence to latitude 36°–56'–04.1"N, longitude 76°–20'–27.5"W, thence to latitude 36°–56'–00.0"N, longitude 76°–22'–11.7"W, thence to the beginning.

(5) *Norfolk Harbor Channel anchorages*—(i) *Anchorage M.* The water enclosed by a line beginning at latitude 36°–55'–37.7"N, longitude 76°–19'–48.1"W, thence to latitude 36°–55'–22.1"N, longitude 76°–18'–48.1"W, thence to latitude 36°–55'–20.8"N, longitude 76°–20'–11.1"W, thence to latitude 36°–55'–37.0"N, longitude 76°–20'–09.6"W, thence to the beginning.

(ii) *Anchorage N.* The water enclosed by a line beginning at latitude 36°–54'–35.3"N, longitude 76°–19'–47.5"W, thence to latitude 36°–54'–03.9"N, longitude 76°–19'–45.0"W, thence to latitude 36°–53'–56.0"N, longitude 76°–20'–09.0"W, thence to latitude 36°–54'–31.4"N, longitude 76°–20'–15.1"W, thence to latitude 36°–54'–45.8"N, longitude 76°–20'–14.0"W thence to the beginning.

(iii) *Anchorage O.* The water enclosed by a line beginning at latitude 36°–53'–28.0"N, longitude 76°–19'–16.3"W, thence to latitude 36°–53'–00.0"N, longitude 76°–19'–29.9"W, thence to latitude 36°–53'–04.0"N, longitude 76°–19'–57.6"W, thence to latitude 36°–53'–28.0"N, longitude 76°–19'–57.6"W, thence to the beginning.

(6) *Elizabeth River anchorages.*—(i) *Anchorage P, Lambert's Point.* The water enclosed by a line beginning at latitude 36°–52'–41.0"N, longitude 76°–20'–07"W, thence to latitude 36°–52'–39.5"N, longitude 76°–20'–37.8"W, thence to latitude 36°–52'–18.8"N, longitude 76°–20'–34.3"W, thence to latitude 36°–52'–22.2"N, longitude 76°–20'–03.8"W, thence to the beginning.

(ii) *Anchorage Q.* The water enclosed by a line beginning at latitude 36°–52'–17.8"N, longitude 76°–19'–38.8"W, thence to latitude 36°–52'–01.1"N, longitude 76°–19'–15.5"W, thence to latitude 36°–51'–56.7"N, longitude 76°–19'–21.4"W, thence to latitude 36°–52'–13.3"N, longitude 76°–19'–44.7"W, thence to the beginning.

(iii) *Anchorage R, Port Norfolk.* The water enclosed by a line beginning at latitude 36°–51'–52.8"N, longitude 76°–19'–32.9"W, thence to latitude 36°–51'–44.7"N, longitude 76°–19'–21.2"W, thence to latitude 36°–51'–37.8"N, longitude 76°–19'–24.3"W, thence to latitude 36°–51'–32.5"N, longitude 76°–19'–31.1"W, thence to latitude 36°–51'–40.7"N, longitude 76°–19'–37.3"W, thence to latitude 36°–51'–45.8"N, longitude 76°–19'–31.5"W, thence to the beginning.

(iv) *Anchorage S, Port Norfolk.* The water enclosed by a line beginning at latitude 36°–51'–41.0"N, longitude 76°–19'–15.5"N, thence to latitude 36°–51'–33.1"N, longitude 76°–19'–04.7"W, thence to 36°–51'–31.9"N, longitude 76°–19'–17.0"W, thence to the beginning.

(v) *Anchorage T, Hospital Point.* The water enclosed by a line beginning at latitude 36°–51'–05.2"N, longitude 76°–18'–23.0"W, thence to latitude 36°–50'–49.5"N, longitude 76°–18'–00.0"W, thence to latitude 36°–50'–36.7"N, longitude 76°–17'–52.8"W, thence to latitude 36°–50'–33.6"N, longitude 76°–17'–58.8"W, thence to latitude 36°–50'–49.3"N, longitude 76°–18'–09.0"W, thence to latitude 36°–50'–50.3"N, longitude 76°–18'–07.8"W, thence to latitude 36°–50'–56.2"N, longitude 76°–18'–12.5"W, thence to latitude 36°–51'–01.8"N, longitude 76°–18'–32.3"W, thence to the beginning.

(7) *The Hague.* Anchorage U. The water of the basin known as "The Hague", north of the Brambleton Avenue Bridge, except for the area within 100 feet of the bridge span that provides access to and from the Elizabeth River.

(b) *Definitions.* As used in this section:

(1) "Dangerous cargo" means "certain dangerous cargo" as defined in section 160.203 of this title.

(2) "Military explosives" means "military explosives as defined in 46 CFR 146.29–11.

(c) *General Regulations.* (1) Except as otherwise provided, this section applies to vessels over 65 feet in length and vessels carrying or handling dangerous cargo or military explosives while anchored in an anchorage ground described in this section.

(2) Except as otherwise provided, no vessel may occupy an anchorage for more than 30 days, unless the vessel obtains a permit from the Captain of the Port.

(3) Except in an emergency, no vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels, may occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may upon application assign a vessel to a specific berth within an anchorage for a specific period of time.

(5) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of a berth. Only the vessel that holds the revocable permit may use the berth during the period that the permit is in effect.

(6) The Commander, Fifth Coast Guard District, may authorize the establishment and placement of temporary mooring buoys within a berth. Placement of a fixed structure within an anchorage may be authorized by the District Engineer, U.S. Army Corps of Engineers.

(7) If the application is for the long-term lay up of a vessel, the Captain of the Port may establish special conditions in the permit that the vessel must comply with.

(8) Upon notification by the Captain of the Port to shift its position within an anchorage, a vessel at anchor shall get underway at once or signal for a tug. The vessel shall move to its new location in a prompt manner.

(9) The Captain of the Port may prescribe specific conditions for anchoring vessels within the anchorages described in this section, including the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(10) A vessel that does not have a sufficient crew on board to weigh anchor at any time shall have two anchors in place with a mooring swivel, unless the Captain of the Port shall waive this requirement. Members of the crew may not be released until the required anchors have been set.

(11) No vessel at anchor or at mooring within an anchorage may transfer oil to another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(12) Barges may not anchor in the deeper portions of anchorages or interfere with the anchoring of deep-draft vessels.

(13) Barges towed in tandem to an anchorage shall be nested together when anchored.

(14) Any vessel anchored or moored in an anchorage adjacent to the Chesapeake Bay Bridge-Tunnel or I–664 Bridge-Tunnel shall be capable of getting underway within 30 minutes with sufficient power to keep free of the bridge-tunnel complex.

(15) A vessel may not anchor or moor in an anchorage adjacent to the Chesapeake Bay Bridge-Tunnel or I–664 Bridge-Tunnel if its steering or main propulsion equipment is impaired.

(d) *Regulations for Vessels Carrying or Handling Dangerous Cargoes or Military Explosives.* (1) This paragraph applies to any vessel, other than a naval vessel, carrying or handling dangerous cargoes or military explosives.

(2) Unless otherwise directed by the Captain of the Port, a vessel, handling or carrying dangerous cargoes or military explosives must be anchored or moored within the Anchorage Berth E–1.

(3) Any vessel used in connection with loading or unloading dangerous cargo or military explosives in an anchorage, including tugs and stevedore boats, must carry a written permit issued by the Captain of the Port.

(4) The Captain of the Port may require every individual having business on board a vessel that is being loaded with dangerous cargo or military explosives while in an anchorage, other than members of the crew, to have a pass issued by the Captain of the Port or other form of identification prescribed by the Captain of the Port.

(5) Every individual having business on board a vessel that is being loaded with dangerous cargo or military explosives while in an anchorage, other than members of the crew, shall present the pass or identification prescribed in paragraph (d)(4) of this section to any Coast Guard boarding officer who requests it.

(6) The Captain of the Port may revoke a pass to be on board a vessel that is loaded with dangerous cargo or military explosives at any time.

(7) A non self-propelled vessel carrying dangerous cargo or military explosives shall have a tug in attendance at all times while at anchor.

(8) A vessel that is carrying or handling dangerous cargo or military explosives while at anchor shall display by day a red flag in a prominent location and at night a fixed red light.

(e) *Quarantine Anchorage Regulations.* (1) Anchorage Berth K–3 is the "Quarantine Anchorage".

(2) Any vessel that requires examination by quarantine, customs, or immigration authorities, but whose draft or size prevents it from using Anchorage Berth K–3, may anchor in another anchorage that it is otherwise authorized to use, if the vessel notifies the Captain of the Port and the agency that ordered the vessel to the "Quarantine Anchorage".

(f) *Regulations of Specific Anchorages:*—(1) *Anchorage A.* Except for a naval vessel, military support vessel, or vessel in an emergency situation, no vessel may anchor in Anchorage A without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage A.

(2) *Anchorages B and C.* Except for a naval vessel, no vessel may anchor in Anchorage B or C without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage B or C.

(3) *Anchorage D.* Except for a naval vessel or vessel in an emergency situation, no vessel may anchor in Anchorage D without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage D.

(4) *Anchorage E.* (i) No vessel may anchor in Anchorage E without a permit issued by the Captain of the Port.

(ii) The Captain of the Port shall give commercial vessels priority over naval and public vessels.

(iii) The Captain of the Port may revoke a permit to anchor in Anchorage E, issued under paragraph (f)(4)(i) of this section, at any time.

(iv) A vessel may not anchor in Anchorage Berth E–1 unless the vessel is carrying or handling dangerous cargo or military explosives.

(v) No vessel may anchor within 500 yards of Anchorage Berth E–1, without the permission of the Captain of the Port, if the berth is occupied by a vessel carrying or handling dangerous cargo or military explosives.

(5) *Anchorage F.* A vessel less than 700 feet in length or having a draft less than 40 feet may not anchor in Anchorage F without the permission of the Captain of the Port.

(6) *Anchorage G.* (i) Except for a naval vessel, no vessel may anchor in Anchorage G without the permission of the Captain of the Port.

(ii) When handling or transferring military explosives in Anchorage G, a naval vessel must comply with Department of Defense Ammunition and Explosives Safety Standards, or the standards in this section, whichever are the more stringent.

(iii) When barges and other vessels carrying military explosives are berthed at the Ammunition Barge Mooring Facility, located at latitude 36°-58'-34"N, longitude 76°-21'-12"W, no other vessel, except a vessel that is receiving or offloading military explosives, may anchor within 1,000 yards of the Ammunition Barge Mooring Facility.

(iv) Whenever a vessel is handling or transferring military explosives while at anchor in Anchorage G, no other vessel may anchor in Anchorage G without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Base Norfolk, before granting a vessel permission to anchor in Anchorage G.

(v) No vessel located within Anchorage G may handle or transfer military explosives within 400 yards of Norfolk Harbor Entrance Reach.

(vi) No vessel may handle or transfer military explosives within 850 yards of another anchored vessel, unless the other vessel is also handling or transferring military explosives.

(vii) No vessel may handle or transfer military explosives within 850 yards of Anchorages F or H.

(7) *Anchorage I.*—(i) *Anchorage Berths I–1 and I–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berths I–1 or I–2 without the permission of the Captain of the Port.

(8) *Anchorage K.* (i) Anchorage Berths K–1 and K–2. No vessel less than 500 feet in length or having a draft less than 30 feet may anchor in Anchorage Berths K–1 or K–2 without the permission of the Captain of the Port.

(ii) A vessel that is arriving from or departing for sea and requires an examination by public health, customs, or immigration authorities may anchor in the Anchorage Berth K–3.

(iii) Unless directed by the Captain of the Port, a vessel that does not require an examination by public health, customs, immigration authorities may not anchor in the Anchor Berth K–3.

(iv) Every vessel using Anchorage Berth K–3 shall be prepared to move promptly under its own power to another location when directed by the Captain of the Port, and shall promptly vacate Anchorage Berth K–3 after being examined and released by authorities.

(v) When any vessel using Anchorage Berth K–3 is under the charge of a pilot,

the pilot shall remain on board while the vessel is in Anchorage Berth K–3.

(vi) Any non-self-propelled vessel using Anchorage Berth K–3 shall have a tugboat in attendance while undergoing examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

(9) *Anchorage P.* (i) No vessel waiting to be loaded may remain in this Anchorage P over 48 hours, except when non-availability of loading facilities, inclement weather, ice conditions, or other circumstances beyond the vessel's control prohibit the vessel from moving.

(ii) No vessel loaded with cargo may remain in Anchorage P for over 12 daylight hours without permission from the Captain of the Port.

(10) *Anchorage T.* (i) Portions of this anchorage are a special anchorage area under § 110.72aa during marine events regulated under § 100.501 of this title.

(11) *Anchorage U.* (i) A vessel may not anchor in Anchorage U, unless the vessel is a recreational vessel.

(ii) No float, raft, lighter, houseboat, or other craft may be laid up for any reason in Anchorage U without the permission of the Captain of the Port.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

3. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§§ 162.55 and 162.60 [Removed]

4. Sections 162.55 and 162.60 are removed.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

5. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

6. Section 165.501 is revised to read as follows:

§ 165.501 Chesapeake Bay Entrance and Hampton Roads, Virginia and Adjacent Waters—Regulated Navigation Area.

(a) *Regulated Navigation Area.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) A line drawn across the entrance to Chesapeake Bay between Cape Charles Light and Cape Henry Light.

(2) A line drawn across Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(3) A line drawn across the James River along the eastern side of the U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(4) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(5) A line drawn across the Nansemond River along the northern side of the Miles Godwin (U.S. Route 17) highway bridge, Suffolk, Virginia.

(6) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(7) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk bridge, Portsmouth, Virginia.

(8) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I–64 highway bridge, Chesapeake, Virginia.

(9) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(10) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(11) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) bridge, Norfolk, Virginia.

(12) A line drawn across Lynnhaven Inlet along the northern side of the Shore Drive (U.S. Route 60) bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:

(1) "CBBT" means the Chesapeake Bay Bridge Tunnel.

(2) "Thimble Shoals Channel" consists of the waters enclosed by a line beginning at Thimble Channel Lighted Bell Buoy 1TS at latitude 36°–56′–59.0″N, longitude 76°–01′–26.5W, thence to Lighted Buoy 21 at latitude 37°–00′–02.9″N, longitude 76°–17′–10.1″W, thence to Lighted Buoy 22 at latitude 37°–00′–02.7″N, longitude 76°–18′–01.5″W, thence to Lighted Buoy 2 at latitude 36°–57′–09.0″N, longitude 76°–01′–22.0″W, thence to the beginning.

(3) "Thimble Shoals North Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Lighted Buoy 2, at latitude 36°–57′–09.0″N, longitude 76°–01′–22.0″W, to Lighted Buoy 18, at latitude 37°–00′–39.3″N, longitude 76°–14′–57.6″W.

(4) "Thimble Shoal South Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Lighted Bell Buoy 1TS, at latitude 36°–56′–59.0″N, longitude 76°–01′–26.5″W, to Lighted Buoy 21 at latitude 37°–00′–02.9″N, longitude 76°–17′–10.1″W.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law Enforcement.

(2) Servicing aids to navigation.

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations*—(1) *Anchoring restrictions.* (i) No vessel over 65 feet in length may anchor or moor in this Regulated Navigation Area outside an anchorage designated in section 110.168 of this title, unless:

(A) The vessel has the permission of the Captain of the Port.

(B) The vessel is carrying explosives for use on river or harbor works or on other work under permit issued by the District Engineer, and the vessel is anchored in or near the vicinity of the work site. The District Engineer shall prescribe the quantities of explosives allowed on the vessel and the conditions under which the vessel may store or handle explosives. The vessel may not anchor unless a copy of the permit and instructions relating to the carriage and handling of explosives from the Corps of Engineers to the vessel or contractor are provided to the Captain of the Port before the vessel anchors.

(ii) With the permission of the Captain of the Port, a vessel may anchor in a channel if the vessel is authorized by the District Engineer, Corps of Engineers, to engage in the recovery of sunken property, lay or repair a legally established pipe line or cable, or engage in dredging operations.

(iii) A vessel engaged in river and harbor improvement work under the supervision of the District Engineer may anchor in a channel, if the District Engineer notifies the Captain of the Port in advance of the start of the work.

(iv) Except as provided in paragraphs (d)(1)(ii) and (iii) of this section, a vessel may not anchor in a channel, unless the vessel is unable to proceed without endangering the safety of individuals, property, or the environment.

(v) A vessel that is anchored in a channel, because the vessel is unable to proceed without endangering the safety of individuals, property, or the environment, shall:

(A) Not anchor, if possible, within a cable or pipe line area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Anchor near the edge of the channel, if possible.

(D) Not interfere with the free navigation of a channel.

(E) Not obstruct the approach to any pier.

(F) Not obstruct aids to navigation or interfere with range lights.

(G) Move to a designated anchorage or get underway as soon as possible or when directed by Captain of the Port.

(2) Secondary Towing Rig Requirements. (i) No vessel over 100 gross tons may be towed in this Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessels' hulls.

(3) *Anchoring Detail Requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I–664 Bridge-Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(4) *Draft Limitations.* A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Channel crossings shall be made as perpendicular to the channel axis as possible.

(5) *Traffic Directions.* (i) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal South Auxiliary Channel shall proceed in an eastbound direction.

(6) *Restrictions On Vessels With Impaired Maneuverability.*—(i) *Before entry.* No vessel over 100 gross tons, whose ability to maneuver is impaired by hazardous weather, defective steering equipment, defective main propulsion machinery, or other damage may enter the Regulated Navigation Area, without the permission of the Captain of the Port, unless the vessel is attended by one or more tugboats with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area.

(ii) *After entry.* The master of a vessel over 100 gross tons, which is underway in the Regulated Navigation Area, shall, as soon as possible, do the following, if the vessel's ability to manuever becomes impaired for any reason:

(A) Report the impairment to the Captain of the Port.

(B) Unless the Captain of the Port waives this requirement, have one or more tugboats, with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area, attend the vessel.

(7) *Requirements for Navigation Charts, Radars, and Pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area unless:

(i) The vessel has on board:

(A) Corrected Charts of the Regulated Navigation Area.

(B) An operative radar during periods of reduced visibility. OR

(C) A pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(8) *Emergency Procedures.* (i) Except as provided in paragraph (d)(7)(ii) and (iii) of this section, any vessel, in an emergency, may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of individuals, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is within two nautical miles of the CBBT or I–664 Bridge-Tunnel (other than a self-propelled vessel that is capable of getting underway in 30 minutes, has sufficient power to avoid any bridge, tunnel island, or vessel, and whose maneuverability is not impaired by a steering equipment or main propulsion defect):

(A) Shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(B) May not anchor outside of an anchorage designated in section 110.168 of this title, unless the vessel in unable to proceed to an anchorage without endangering the safety of individuals, property, or the environment.

(C) Shall make arrangements for one or more vessels to attend the vessel, with sufficient power to keep the vessel in position.

(iii) If the vessel over 100 gross tons must anchor outside an anchorage because the vessel is unable to proceed without endangering the safety of individuals, property, or the environment, the vessel shall:

(A) not anchor, if possible, within a cable or pipe line area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Not intefere with the free navigation of a channel.

(D) Not obstruct the approach to any pier.

(E) Not obstruct aids to navigation or interfere with range lights.

(F) Move to a designated anchorage or get underway as soon as possible or when directed by the Captain of the Port.

(9) *Vessel Speed Limits on Little Creek.* No vessel may proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(10) *Vessel Speed Limits on Southern Branch of the Elizabeth River.* No vessel may proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad bridge between Chesapeake and Portsmouth, Virginia.

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* (i) Except for a vessel that is moored at a marina, wharf, or pier or is anchored, no vessel may come within or remain within 500 yards from a naval aircraft carrier or other large naval vessel, which is restricted in its ability to maneuver in the confined waters, while transiting the Elizabeth River between the Norfolk Naval Base, Norfolk, Virginia, and the Norfolk Naval Shipyard, Portsmouth, Virginia, without the permission of the Captain of the Port.

(ii) Permission may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or the Coast Guard patrol commander.

(iii) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by this subparagraph.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* (i) Except for a vessel

that is moored at a marina, wharf, or pier or is anchored and which remains moored or at anchor, no vessel may come within or remain within 250 yards from the port and starboard sides and 300 yards from the bow and stern of a vessel that is carrying liquefied petroleum gas in bulk as cargo, while the gas carrier transits between the Thimble Shoals Lighted Buoy # 3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River, without the permission of the Captain of the Port.

(ii) Permission may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or the Coast Guard patrol commander.

(iii) A vessel that has carried liquefied petroleum gas in a tank is carrying the liquefied petroleum gas as cargo for the purposes of paragraph (d)(12) (i) of this section, unless the tank has been gas freed since the liquefied petroleum gas was last carried as cargo.

(iv) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by this subparagraph.

(e) *Waivers.* (1) The Captain of the Port may, upon request, waive any regulation in this section, if the Captain of the Port finds that the vessel can be operated safely.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of Vessels Within the Regulated Navigation Area.* (1) When necessary to prevent damage, destruction, or loss of any vessel, the I-664 Bridge Tunnel, or CBBT, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed to further the maritime or commercial interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall compy with any order or directions issued to the master's vessel by the Captain of the Port.

§§ 165.505 and 165.506 [Removed]

7. Sections 165.505 and 165.506 are removed.

Dated: May 20, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-12519 Filed 6-2-88; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88-2]

Extension of Comment Period; Inquiry on Assessment of Interest on Underpaid Cable Copyright Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office is extending the period of public comment for its Notice of Inquiry (RM 88-2) into issues relating to the assessment of interest on underpaid cable copyright royalties under the cable compulsory license of 17 U.S.C. 111. The National Cable Television Association requested additional time to comment.

DATE: Comments should be received on or before June 30, 1988. Reply comments should be received on or before July 10, 1988.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: On May 10, 1988, the Copyright Office published a Notice of Inquiry (53 FR 16567) inviting public comment in response to a petition from the Motion Picture Association of America, supported by other representatives of copyright owners, requesting that the Copyright Office assess interest on underpaid cable copyright royalties.

By letter of May 23, 1988, the National Cable Television Association requested a time extension of three weeks to respond to the Inquiry, in view of other proceeding before the Copyright Office in which NCTA expects to file and which overlap the assessment of interest inquiry.

To facilitate full and adequate public comment, the Copyright Office hereby extends the time for filing in RM 88-2 to June 30, 1988 for initial comments, and establishes a reply comment period, for which the deadline is July 10, 1988.

List of Subjects in 37 CFR Part 201

General provision on copyrights, Cable television, Cable compulsory license.

Dated: May 26, 1988.

Ralph Oman,

Register of Copyrights.

[FR Doc. 88-12546 Filed 6-2-88; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3389-9; GA-015]

Approval and Promulgation of Implementation Plans; Georgia; Part D New Source Review (NSR) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 15, 1986, the Georgia Department of Natural Resources Environmental Protection Division submitted to EPA amendments to Georgia Air Quality Control Rules 391-3-1-.01, Definitions, and 391-3-1-.03, Permits. Georgia Rule 391-3-.01, Definitions, was amended to incorporate and adopt by reference the definitions contained in 40 CFR 51.165(a)(1) (i)-(xviii) as amended for application in officially designated nonattainment areas. Georgia Rule 391-3-1-.03, Permits, was amended to add new paragraphs to meet the requirements of 40 CFR 51.165(a)(3)(i), 40 CFR 51.165(a)(3)(ii) (c)-(d), 40 CFR 51.165(a)(3)(ii) (f)-(g), and 40 CFR 51.165(a)(4) (a)-(aa). Due to the recodification of existing federal regulations for the development of State Implementation Plans (SIPs) accomplished on November 7, 1986 (51 FR 40656), all references to 40 CFR 51.18(j) in Georgia's submittal of these amendments were interpreted in this proposal to refer to 40 CFR 51.165(a). These new paragraphs are identical to or more stringent than the federal regulations mentioned.

DATES: Comments must be received on or before July 5, 1988.

ADDRESSES: Comments may be mailed to Pamela E. Adams, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the EPA Regional Office listed above and at the Georgia Department of Natural Resources, Suite 1252, 205 Butler Street, SE., Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams at (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On October 9, 1986, the Georgia Department of Natural Resources held a public hearing to consider amendments to Chapter 391-3-1 of their rules, Rules for Air Quality Control. Among the considered amendments were amendments to Georgia Air Quality Control Rules 391-3-1-.01, Definitions, and 391-3-1-.03, Permits. These amendments were adopted by the Georgia Department of Natural Resources on December 3, 1986. They were submitted to EPA on December 15, 1986, as State Implementation Plan (SIP) revisions.

Georgia Rule 391-3-1.01, Definitions, was amended to incorporate and adopt by reference the definitions contained in 40 CFR 51.165(a)(1)(i)-(xviii) as amended for application in officially designated nonattainment areas. The definitions contained in the federal rules include definitions for the following: Stationary source; building, structure, facility, or installation; potential to emit; major stationary source; major modification; net emissions increase; emissions unit; secondary emissions; fugitive emissions; significant; allowable emissions; actual emissions; lowest achievable emission rate; federally enforceable; begin actual construction; commence; necessary preconstruction approvals or permits; and construction. Currently, our nonattainment designations correspond with Georgia's. If at any time in the future Georgia does not apply the federal designations, EPA will issue a SIP call and possibly effect construction bans.

The federal definition of "net emissions increase" states in part, "An increase or decrease in actual emissions is creditable only if: It occurs within a reasonable period to be specified by the reviewing authority * * *." The Georgia Department of Natural Resources' Environmental Protection Division specified that this period be three (3) years prior to a permit application. This was specified in the "Summary of comments received at October 9, 1986, public hearing on air quality control rule revisions and new asbestos removal rules," which will be incorporated into the rulemaking page of the final approval notice.

Georgia Rule 391-3-1.03, Permits, was amended to add six new paragraphs to meet the requirements of 40 CFR 51.165(a)(3)(i), (3)(ii) (c)-(d), (3)(ii) (f)-(g), and (4) (a)-(aa). The new paragraph of 391-3-1.03 specified as paragraph six meets the requirements of 40 CFR 51.165(a)(3)(i). Paragraph six is more stringent than the latter in stating that "the offset baseline for determining credits for emission reductions at a source is the applicable emission limits in this Chapter or the actual emission at the time application to construct is filed, whichever is less." Regulation 40 CFR 51.165(a)(3)(i) simply states that "the baseline for determining credit for emission reductions is the emissions limit under the applicable State Implementation Plan in effect at the time application to construct is filed." except in certain cases specified in the regulation where the offset baseline must "be the actual emissions of the source from which the offset credit is obtained." In addition, paragraph six incorporates the stipulation that "creditable reductions must occur within two years prior to the filing of the permit application and the time the newly permitted source emissions commence."

Georgia Rule 391-3-1.03, paragraph seven is almost identical to 40 CFR 51.165(a)(3)(ii)(c) except for very slight wording differences. Both paragraphs are identical in meaning except that paragraph seven specifies that "shutdown or curtailment of production" must occur "less than one year prior to the date of permit application" in order to be used for offset credits. Regulation 40 CFR 51.165(a)(3)(ii)(c) is less stringent than paragraph seven in stating that shutdowns or production curtailments must occur "after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier" in order to be used for offset credits.

Paragraph eight of Georgia Rule 391-3-1-.03 states, "No emission offset credit may be allowed for replacing one VOC compound with another of less reactivity."

This paragraph is more stringent than the federal regulation on the same topic, 40 CFR 51.165(a)(3)(ii)(d) which allows the exception "except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314 July 8, 1977).

Paragraph nine of Georgia Rule 391-3-1-.03 is identical to 40 CFR 51.165(a)(3)(ii)(f). Paragraph ten, although worded differently, is identical in meaning to 40 CFR 51.165(a)(3)(ii)(g). Paragraph eleven is identical in meaning to 40 CFR 51.165(a)(4)(a)-(aa), but stated in a different manner.

In the **Federal Register** of July 8, 1986 (50 FR 27892), EPA published final regulations to implement Section 123 of the Clean Air Act, which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit a source can claim while setting emissions limitations. The dispersion techniques include the use of stack heights greater than 65 meters and the use of other techniques to increase the dispersion of emissions rather than reduce the emissions of a source. Georgia has adopted their own stack height regulations which EPA has reviewed. EPA is in the process of preparing an approval notice for those regulations. Approval of the amendments discussed in this proposal will not be finalized until Georgia's stack height regulations are approved.

Georgia's regulation adopts the definition of "stationary source" which was promulgated on June 25, 1982 (47 FR 27554), by EPA. This definition excludes all vessel emissions from the definition for purposes of determining if the source is major. On January 17, 1984, the Court of Appeals for the District of Columbia Circuit overturned and remanded to EPA for further consideration this vessel emissions exemption portion of EPA's new source review regulations. EPA has not yet completed its reconsideration of how vessel emissions are to be treated. However, Georgia has submitted a written statement specifying that no waterways that are deep enough and wide enough to afford passage of ships and barges are located within the Atlanta nonattainment area, the only such area in Georgia. Therefore, EPA is proposing approval of the amendments to Georgia Rules 391-3-1-.01 and 391-3-1-.03.

The Georgia Environmental Protection Division is aware that these NSR regulations, as submitted to EPA, have no provisions for source responsibility (40 CFR 51.165(a)(5)(ii)). The Division has agreed to adopt provisions for source responsibility at its next public hearing. Georgia has been notified that EPA will not finalize approval on these NSR regulations until Georgia completes rulemaking to adopt the source responsibility requirements (40 CFR 51.165(a)(5)(ii)).

On October 14, 1981, the Environmental Protection Agency (EPA) revised the new source review (NSR) regulations in 40 CFR Part 51 to give states the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This defintion provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant, then there would be no net increase in emissions at the plant and therefore no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition [or a definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]. Under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 Federal Register notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, the Act provided for reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the states under the demands of Part D eventually would have adequate State Implementation Plans (SIPs) in place.

For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767 col. 2].

EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirter processes and hence retard not ony economic growth, but also progress toward clean air. EPA also pointed out that under the plantwide definition, new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans, and at best the potential for air quality improvements driven by the marketplace.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767–50769).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. *Chevron, U.S.A. Inc. v. NRDC, Inc.*, 104 S. Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S. Ct. at 2792). EPA today generally reaffirms the rationales stated in the 1931 rulemaking. Those rationales were left undisturbed by the Supreme Court decision. Further, EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

There has been, however, a material change in circumstances from those surrounding the 1981 rulemaking. In 1981, EPA assumed that nonattainment areas already had or shortly would have Part D SIP's in place that would bring about RFP and attainment by the applicable statutory deadline. Now, however, many nonattainment areas that were to be free of NAAQS violations by the end of 1982 are still experiencing them and have yet to respond adequately to EPA's calls for SIP revisions. See generally EPA's policy on Compliance with the Statutory Provisions of Part D of the Act, 48 FR 50686 (November 2, 1983). Simiarly, many areas that were to be free of violations by the end of 1987 still do not have fully approved Part D plans and, at this point, could not be free of the violations by then without the imposition of draconian measures [(see, e.g., 51 FR 34428, 34431–34435 (September 26, 1986)].

In light of this history of SIP development and implementation, EPA will now approve adoption of the plantwide definition into SIP's for nonattainment areas that still lack adeaquate plans only if the state has shown that it is making, and will continue to make, reasonable efforts to adopt and submit a complete plan for RFP and timely attainment. Specifically the state must submit written assurances that it is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development (including dates for the completion of an emissions inventory and subsequent increments of progress) stated in the submission or previously forwarded to EPA. In adopting and defending the plantwide definition, EPA relied in large measure on its confidence that the Act would operate independently to generate adequate attainment plans, so as to make manageable whatever risks were posed by the use of the plantwide definition. The assurances described above are necessary to restrengthen EPA's confidence with respect to this specific state plan.

The SIP revision being proposed for approval today would substitute a plantwide definition for a dual definition in Georgia's existing NSR program. The one nonattainment area to which this program applies (Atlanta area for ozone and carbon monoxide) has a Part D plan previously approved by EPA, but nevertheless is still experiencing violations of the ozone NAAQS. In response to a 1984 SIP call, Georgia recently submitted a SIP addressing the nonattainment situation. Although this SIP purportedly demonstrates attainment by 1992, Region IV has not yet reviewed this SIP to determine whether or not it is approvable. Georgia has also committed in its section 105 FY 1988 grant commitments to complying with EPA's post-87 carbon monoxide and ozone policy which may include an

additional SIP call. Therefore, the State has submitted assurances that it is making, and will continue to make, reasonable efforts to adopt and submit the necessary additional SIP revisions. The State has shown that in obtaining EPA approval of its original Part D SIP it did not rely on any emission reductions from the operation of its existing NSR program.

Therefore, EPA here proposes to approve the switch to a plantwide definition, in accordance with its 1981 action.

All of the amendments to Georgia Rules 391–3–1–.01 and 391–3–1–.03 are identical to or more stringent than corresponding federal regulations. Therefore, they will adequately protect the National Ambient Air Quality Standards (NAAQS) and meet all requirements of the Clean Air Act (CAA).

Although the revisions to Georgia's rules being proposed for approval today are in accordance with EPA regulations, it is noted that, under EPA's program for correctly violations of the ozone standard after the statutory deadline of December 31, 1987, EPA is currently reviewing previously approved new source review regulations for all ozone nonattainment areas, including those in Georgia. As a result of that review, Georgia may be required to revise any previously approved portions of their new source review rule which are not in accordance with EPA's regulations.

Proposed Action

EPA is today proposing to approve these amendments to the Georgia rules since they make these rules identical to or more stringent than corresponding federal regulations. Therefore, no adverse effects are anticipated.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Date: June 25, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88–12365 Filed 6–2–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[FRL–3389–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Primary Treatment Sludge From Petroleum Refineries

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comment; Notice of correction; and Notice of extension of comment period.

SUMMARY: The purpose of this notice is to correct a typographical error in the Agency's April 13, 1988 notice of data availability (53 FR 12162) and to extend the public comment period on that notice. That notice of data availability announced the availability of additional information in support of the Agency's November 12, 1980 proposal to expand the scope of the listings for API Separator Sludge and Dissolved Air Flotation Float (45 FR 74893). The notice of data availability requested comment on that data and its relevance to two possible clarifications to the scope of the proposed listings.

In the April 13, 1988 notice of data availability, the Agency stated that "* * * the Soxhlet residue of Method 3540 * * *" should be used to determine the percent solids for the dry basis oil determination (see 53 FR 12166, column 3, lines 13 and 14). Interested parties, desiring to see an exact copy of the protocol being recommended, were then referred to the docket. The Notice of Data Availability should be amended to read "* * * the Soxhlet residue of Method 1330 * * *".

EPA has received several requests for an extension of the comment period. The basis for these requests was that more time was needed to adequately evaluate the large volume of data presented and then respond to the associated issues. Commentors also were simultaneously preparing responses to the proposed land disposal restrictions rule. This presented a problem for the commentors since the same personnel were involved in the review of both rules. Therefore, to ensure that commentors have adequate time to prepare their comments, we are taking this opportunity to lengthen the comment period by 30 days, from May 31, 1988 to June 30, 1988.

DATES: The deadline for submitting written comments on the April 13, 1988 notice is extended by 30 days, from May 31, 1988 to June 30, 1988.

ADDRESSES: One original and three copies of all comments, identified by the docket number F–88–PTSA–5F, should be sent to the following address: EPA RCRA Docket (S–212) (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346 toll-free or (202) 382–3000.

For information on specific aspects of this proposed rule contact: Ben Smith, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4791.

Dated: May 25, 1988.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 88–12529 Filed 6–2–88; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 53, No. 107
Friday, June 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.

ACTION

VISTA Projects in the State of New York; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of Funds; VISTA Projects in New York.

ACTION Region 2 announces the availability of funds for fiscal year 1988 for new VISTA program grants authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) in the State of New York. Applications not approved by ACTION for fiscal year 1988 may, at the discretion of the agency, be retained for consideration for fiscal year 1989. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation are available from: Joe Gallick, ACTION Region 2, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212–466–2936.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteer live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

B. Objectives

ACTION Region 2 will be awarding grants for the placement of VISTA Volunteers in New York in the following emphasis areas:

1. Unemployment—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. Homelessness—Development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counseling programs for at risk youth; and job-training services for shelter residents.

3. Drug & Alcohol Abuse—Prevention and education programs directed primarily at low-income youth; and development of low-income parent support groups.

4. Economic Development—Appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; planning and organization of self-help strategies for low-income residents of "enterprise/job zones"; and entrepreneurial development and management training for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are Federal, State, or local agencies, or private nonprofit organizations.

D. Scope Of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers

the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by the total number of VISTA Volunteers, cannot exceed $8,000. Grants of 10–15 Volunteers will range from $80,000–$120,000 in Federal funds.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, a 50%, non-Federal match of the supervisor's salary and fringe benefits is mandatory. The supervisor of the VISTA project must serve on a full-time basis.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria for Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of new VISTA program grants. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project efforts.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available to volunteers to perform their task.

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from particpating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Region 2 will review and evaluate all eligible applications prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to Joe Gallick, ACTION Region 2, 6 World Trade Center, Room 758, New York, NY 10048–0206. The deadline for receipt of applications is 5:00 P.M. local time July 29, 1988. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421 B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. A list of the Board of Director members which includes their professional affiliations.

Signed at Washington, DC this 27th day of May, 1988.

Donna M. Alvarado,

Director.

[FR Doc. 88–12548 Filed 6–2–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forest Service

Stansbury Mining Corporation—Western Vermiculite Project; Bitterroot National Forest, Ravalli, County, MT; Intent To Prepare an Environmental Impact Statement Revision

The Bitterroot National Forest and the Montana Department of State Lands are extending the formal scoping comment period for the proposed Stansbury Mining Corporation—Western Vermiculite Project Environmental Impact Statement.

The Notice of Intent, published in the **Federal Register** of April 27, 1988, stated that the comment period would end 30 days after the date of that publication. The scoping comment period date is hereby extended to June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Oliver, Project Coordinator, Darby Ranger District, P.O. Box 266, Darby, MT 59829; telephone 406–821–3913.

Date: May 25, 1988.

Robert S. Morgan,

Forest Supervisor.

[FR Doc. 88–12574 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–11–M

National Agricultural Statistics Service

Livestock Report Date Changes

Notice is hereby given that the National Agricultural Statistics Service (NASS) plans to publish all major livestock reports on Fridays beginning in 1989. This proposal is in response to comments from the livestock industry.

The publication date of the following reports will be scheduled for release on Fridays: *Cattle, Cattle on Feed, Hogs and Pigs, Sheep and Goats,* and *Livestock Slaughter.* When Friday is a holiday, the report will be issued on the next earlier workday.

Comments from interested parties regarding this action should be sent to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division; Room 5906–S, NASS/USDA; Washington, DC 20250. Comments should be forwarded within 30 days of this notice.

Dated: May 27, 1988.

Charles E. Caudill,

Administrator.

[FR Doc. 88–12485 Filed 6–2–88; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–087]

Portable Electric Typewriters From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers 11 manufacturers and/or exporters of this merchandise to the United States and various periods from April 1, 1981 through April 30, 1986 (but generally from May 1, 1982 through April 30, 1986). The review indicates the existence of dumping margins for certain firms during particular periods.

As a result of the review the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1504) the final results of its last administrative review of the antidumping duty order on portable electric typewriters from Japan (45 FR 30618, May 9, 1980). We began the review of the order for the May 1, 1981 through April 30, 1984 periods for various firms under our old regulations. After the promulgation of our new regulations the petitioner and respondents requested that we complete the administrative review in accordance with § 353.53a(a) of the Commerce Regulations. The petitioner and respondents also requested that we conduct an administrative review of the May 1, 1984 through April 30, 1985 period in accordance with the Commerce Regulations.

We published a notice of initiation of the antidumping duty administrative review for various periods from May 1, 1981 through April 30, 1985 on July 9, 1986 (51 FR 24883). The petitioner and respondents requested that we conduct an administrative review of the antidumping duty order for the period May 1, 1985 through April 30, 1986 in accordance with § 353.53a(a) of the Commerce Regulations. We published a notice of initiation of the antidumping duty administrative review for this period on June 23, 1986 (51 FR 22843). The Department has now conducted the administrative review for the above periods in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of non-automatic portable electric typewriters from Japan that do not incorporate a calculating mechanism, in accordance with the scope determination made in the final results of our last administrative review. On March 18, 1988, the Department submitted to the Court of International Trade the final results of a revised determination with respect to the scope of the antidumping duty order pursuant to a remand order from the Court in *Smith Corona Corporation v. United States* (Slip Op. 87–145 December 31,

1987). In that revised determination we determined that non-automatic portable electric typewriters incorporating a calculating mechanism are within the scope of the antidumping duty order. After this decision is finally affirmed by the courts, we will separately review unliquidated entries of non-automatic portable electric typewriters incorporating a calculating mechanism for the companies and periods listed in the preliminary results of this review.

The review covers 11 manufacturers and/or exporters of Japanese portable electric typewriters to the United States and various periods from May 1, 1981 through April 30, 1986.

The Department initiated reviews for Tokyo Electric Company, Ltd. ("TEC"), Fujitsu Ltd., Panasonic, Fuji Xerox, and Olympia, for the period May 1, 1985 to April 30, 1986. We determined that TEC, Fujitsu Ltd. and Panasonic did not have sales to the United States of merchandise included in the scope of the antidumping duty order during the period. Fuji Xerox does not manufacture portable electric typewriters. Olympia is not an exporter of Japanese portable electric typewriters. Olympia U.S.A. is an importer of portable electric typewriters, and imports by Olympia U.S.A. are covered in the analysis of sales by the Japanese manufacturer.

We initiated a review on "Avanti" on June 23, 1986. However, we have discovered that the Avanti is a typewriter model and not a Japanese manufacturer and/or exporter subject to review. The Avanti models are produced by Tokyo Juki Industrial Co., Ltd. ("Tokyo Juki"), a Japanese manufacturer of portable electric typewriters which is covered in this review.

One firm, Ricoh, did not respond to the Department's request for information, and two other firms, Sharp Electronics Corporation and Towa Sankiden Corporation, did not respond adequately to the Department's request for information. Therefore, for these three firms we have used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is the highest rate for a responding firm during each review period, or the prior rate for the non-responding firm, whichever is higher.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, insurance, U.S. and foreign inland freight, U.S. and foreign brokerage fees, handling charges, discounts, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

On February 18, 1988, Brother submitted data for previously unreported U.S. sales for three models for the May 21, 1984 through April 30, 1985 period. Because the submission was untimely, we applied the best information available to these sales. The best information available was based on sales for which Brother reported timely information.

Foreign Market Value

In calculating foreign market value for Brother, Silver Seiko Ltd., ("Silver"), and Canon Inc. ("Canon"), the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, commissions to unrelated parties, rebates, warranty, advertising, credit costs, differences in physical characteristics of the merchandise, and differences in packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses for ESP calculations. No other adjustments were claimed or allowed.

For one model sold by Canon there were no contemporaneous sales in the home market of such or similar merchandise to compare with any U.S. sales; therefore, constructed value, as defined in section 773(e) of the Tariff Act, was used. The constructed value was calculated by adding the cost of materials, labor, factory overhead, general expenses, profit and packing. Actual costs for SG&A and actual profit figures were used in the constructed value since they exceeded the ten percent and eight percent respective statutory minimums. For Brother, when, for any U.S. sale, there were no contemporaneous home market sales of such or similar merchandise, the Department used the best information available, since constructed value information was untimely submitted. The information was received considerably after the deadline for submission had expired, and too near the completion of the preliminary results for consideration.

In calculating foreign market value for Nakajima All Co., Ltd. ("Nakajima") and Tokyo Juki, the Department used sales to third countries since there were insufficient sales of such or similar merchandise in the home market. Third country price was based on the packed, delivered price to unrelated purchasers in the third countries. We made adjustments, where applicable, for inland freight, brokerage fees, credit costs, differences in physical characteristics of the merchandise and differences in packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses for ESP calculations. No other adjustments were claimed or allowed. When, for any U.S. sale, there were no contemporaneous third country sales of such or similar merchandise made at prices at or above the cost of production, constructed value was used. The constructed value was calculated by adding the cost of materials, labor, factory overhead general expenses, profit and packing for SG&A and profit we used the statutory ten and eight percent minimums, respectively, when the actual costs and profit were less than the statutory minimums.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/ Exporter	Time period	Margin (percent)
Brother Industries, Ltd	05/21/82-05/20/83	1.39
	05/21/83-05/20/84	4.73
	05/21/84-04/30/85	5.82
	05/01/85-04/30/86	4.76
Canon, Inc	05/01/85-04/30/86	5.47
Nakajima All Co., Ltd	05/01/82-04/30/83	0.66
	05/01/83-04/30/84	0.29
	05/01/84-04/30/85	1.00
	05/01/85-04/30/86	1.96
Silver Seiko, Ltd	04/01/82-03/31/83	0.05
	04/01/83-03/31/84	0.37
	04/01/84-04/30/85	5.02
	05/01/85-04/30/86	6.58
Tokyo Juki Industrial Co., Ltd	05/01/85-04/30/86	2.40
Towa Sankiden Corp	05/01/85-04/30/86	6.58
Panasonic	05/01/85-04/30/86	[1] 4.92
Fujitsu, Ltd	05/01/85-04/30/86	[1] 6.58
Tokyo Electric Co., Ltd.	05/01/85-04/30/86	[1] 4.92

Manufacturer/ Exporter	Time period	Margin (percent)
Ricoh Corp	05/01/81-04/30/82	4.92
	05/01/82-04/30/83	4.92
	05/01/83-04/30/84	4.92
	05/01/84-04/30/85	5.82
	05/01/85-04/30/86	6.58
Sharp Electronics Corp	05/01/85-04/30/86	6.58

No shipments during the period.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 day after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted Not later than 25 days after the date of publication. Rebuttal briefs are rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisment instructions on each exporter directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Japanese portable electric typewriters. For any shipments of this merchandise manufactured or exported by any new manufacturer and/or exporter, whose first shipments occurred after April 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 6.58 percent shall be required. These deposit requirements are effective for all shipments of Japanese portable electric typewriters entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53 (a)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 28, 1985.

[FR Doc. 88-12540 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certification of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-A0010."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #87-00010, issued on October 5, 1987 (52 FR 37816, October 9, 1987).

Applicant: The North Dakota Export Trading Company, P.O. Box 1078, Grand Forks, North Dakota 58206.

Contact: Clare Carlson, Assistant Manager, telephone: (701) 795-7273.

Application No.: 87-A0010.

Date Deemed Submitted: May 18, 1988.

Summary of the Application

The North Dakota Export Trading Company (NDETC) seeks to amend its certificate to:

1. Add the following additional companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Minn-Dak Grower's Association, Grand Forks, ND, and North Central Commodities, Grand Forks, ND and its controlling entity, Johnstown Bean Company, Johnstown, ND.

2. Expand the list of examples of Products to be covered by the certificate. The revised listing is proposed as follows: Agricultural products, including, but not limited to, wheat, durum, corn, soybeans, edible beans, sunflower seeds, crude and refined sunflower oil, seed and commercial potatoes, livestock, barley, buckwheat, mustard, flaxseed, millet, field peas, triticale, safflower, processed pasta products, rapeseed, oats, honey, semolina, wheat flour, wheat by-products, and processed forms of these products; and agricultural machinery, equipment, and supplies.

3. Revise the "Export Trade Activities and Methods of Operation" section of its certificate to better reflect the interactions among the NDETC and its Members, and to include new activities, items (10) and (11) below. The revised section is proposed as follows: The NDETC and its Members may:

(1) Enter into joint discussions and negotiations with foreign buyers concerning:

a. Standardized production specifications, standardized commodity quality standards, quantities, prices, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreing buyer, the NDETC, and its Members and suppliers;

b. Standardized tender terms in a manner which will allow the NDETC and its Members to compete; and

c. Standardized bidding procedures acceptable to foreign buyers.

(2) Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, including chartering of vessels for the NDETC and any or all of its Members and suppliers, and including negotiations for the inland transportation of Products in the course of being exported.

(3) Enter into agreements among themselves and with individual suppliers on the terms of supplier participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for Products in the course of being exported.

(4) Refuse to deal with an individual or a company with respect to the export of any Product to a foreign buyer.

(5) Refuse to deal with any Member or supplier, with respect to the export of any Product to a foreign buyer, not complying with the standards or other terms of export trade set by the NDETC and/or its Members.

(6) Exchange information among themselves and with individual suppliers concerning the extent of individual supplier and Member participation in specific export transactions in which the NDETC participates. The information to be exchanged upon which agreement may be made includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the Export Markets;

(c) Information on costs specific to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulations affecting sales to Export Markets;

(e) Information about the price, quality, quantity, source, and delivery dates of Products available from suppliers and Members for export; and

(f) Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by the NDETC, its Members, and/or suppliers.

(7) Enter into exclusive or nonexclusive agreements with Export Intermediaries to appoint an Export Intermediary to act for the NDETC and its Members and suppliers, whereby each Export Intermediary agrees not to represent the NDETC's competitors in the sale of Products to any Export Market and not to buy any Products from any of the NDETC's competitors for resale in any Export Market.

(8) Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer agrees not to purchase Products from the NDETC's competitors.

(9) Act as an Export Intermediary for individual suppliers and enter into exclusive or nonexclusive agreements with Export Intermediaries, marketing agents, international banks, suppliers, and others for the provision of export trade facilitation services such as shipping, credit, financial, marketing, and other services.

(10) Enter into discussions and negotiations and make agreements with Members and suppliers regarding the price at which the NDETC determines the supplier or Member will sell exported Products to a foreign buyer.

(11) Enter into exclusive or non-exclusive agreements with suppliers and Members, whereby the supplier and Member agree not to sell a specified product for export to the NDETC's competitors.

(12) Limit eligibility to participate as a shareholder in the NDETC to businesses operating in North Dakota and to North Dakota residents.

(13) Enter into joint ventures with and/to purchase Products from individual suppliers and Members that meet quality, quantity, and price specifications for transactions. When taking title to Products, the NDETC will engage in price, quantity, quality, and other negotiations directly with the foreign buyer.

Date: May 27 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-12472 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

May 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 6, 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: Jerome Turtola, International Trade Specialist, Office of Textile 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 or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 334, 335, 347/348 and 847 are being increased by application of swing. The limit for Category 846pt. is being reduced to account for the swing being applied to the foregoing categories. As a result, the limit for Category 847, which is currently closed, will re-open.

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). Also see 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursant 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.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 31, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manfactured in the People's Republic of China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 6, 1988, the directive of December 30, 1987 is hereby amended to adjust the current limits for cotton, silk blend and other vegetable fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the people's Republic of China:

Category	Adjusted 12-mo limit [1]
334	255,885 dozen.
335	266,250 dozen.
347/348	2,169,300 dozen.
864pt.[2]	33,717 dozen.
847	1,059,581 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 846pt., only TSUSA numbers 381.3576, 381.8557, 384.2734 and 384.7782.

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,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12507 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: June 2, 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); President's February 20, 1986 announcement of a Special Access Program.

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: During negotiations held between the Governments of the United States and the Dominican Republic, agreement was reached, effected by a Memorandum of Understanding dated May 20, 1988, to establish a new bilateral agreement beginning on June 1, 1988 and extending through May 31, 1992. The agreement establishes specific limits for the period June 1, 1988 through May 31, 1989 and guaranteed access levels for the periods June 1, 1988 through November 30, 1988 and June 1, 1988 through May 31, 1989.

In addition, effective on December 1, 1988, the agreement also establishes guaranteed access levels for Categories 338/638, 339/639, 340/640, 342/642 and 347/348/647/648 for the prorated period beginning on December 1, 1988 and extending through May 31, 1989.

The specific limits established for the June 1, 1988 through May 31, 1989 period have been adjusted to cover shipments qualifying for entry under the Special Access Program which are being charged to the specific limits pending implementation of the guaranteed access levels on December 1, 1988.

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). Also see 52 FR 48858, published on December 28, 1987 and 52 FR 12715, published on April 18, 1988.

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.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 31, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding of May 20, 1988, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 2, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on June 1, 1988 and extending through May 31, 1989, in excess of the following levels of restraint:

Category	12-mo restraint limit
338/638	650,000 dozen.
339/639	650,000 dozen.
340/640	475,000 dozen.
342/642	450,000 dozen.
347/348/647/648	1,300,000 dozen of which not more than 700,000 dozen shall be in Categories 347/348 and not more than 900,000 dozen shall be in Categories 647/648.
644	850,000 numbers.

Textile products in Categories 338/638, 339, 640, 342/642, 647/648 and 644 which have been exported to the United States prior to June 1, 1988 shall be subject to this directive.

Textile products in Categories 338/638, 339, 640, 342/642, 647/648 and 644 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under the directive.

Imports charged to the category limits for the periods beginning on June 1, 1987 and January 1, 1988 and extending through May 31, 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.

Additionally, pursuant to the Memorandum of Understanding of May 20, 1988 and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 10, 1986) and 52 FR 26057 (July 11, 1987), effective on June 2, 1988, guaranteed access levels have been established again for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton which are exported from the Dominican Republic during the periods which begin, in the case of Categories 340 and 347/348, on June 1, 1988 and extends through November 30, 1988; and in the case of Category 644, on June 1, 1988 and extends through May 31, 1989:

Category	Guaranteed access level
340	500,000 dozen
347/348	1,000,000 dozen
644	2,400,000 numbers

In carrying out the above directions, the Commissioner of Customs should construe 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,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12505 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in India

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: May 27, 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: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Categories 347/348 is being increased for carryforward and special allowance provided for under the agreement for 100 percent cotton garments made of handloomed fabrics.

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). Also see 53 FR 58, published on January 4, 1988.

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 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

May 27, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 27, 1988, the directive of December 30, 1987 is hereby amended to adjust to 295,638 dozen[1] the limit for cotton textile products in Categories 347/348, as provided under the terms of the current bilateral agreement between the Governments of the United States and India.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12506 Filed 6-2-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 5, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 11, March 25, and April 8, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 7963, 53 FR 9798, and 53 FR 11694) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1988:

Commodities

Enamel, Aerosol
- 8010-01-060-6461
- 8010-00-935-7156
- 8010-00-159-4519
- 8010-00-159-4520
- 8010-00-159-4521
- 8010-00-159-4522

Lacquer, Aerosol
- 8010-00-598-5455
- 8010-00-936-8369
- 8010-00-936-8371

Services

Computer Tape Verification, Tinker Air Force Base, Oklahoma

Repair of Strap, Air Cargo (1670-00-725-1437), Robins Air Force Base, Georgia.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-12523 Filed 6-2-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before July 5, 1988.

ADDRESS: Committee for Purchase form the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Paper, Toilet Tissue
8540–00–530–3770 (GSA requirements for destinations in Maine, Vermont, New Hamsphire, Connecticut, Massachusetts, New York, and New Jersey only)
8540–01–055–6094.

Service

Janitorial/Custodial, Federal Building and Interagency Motor Pool, Louisville, Kentucky.

E.R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 88–12524 Filed 6–2–88; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Extended and Expanded Home Care Demonstration.

SUMMARY: Section 8071 of the FY 88 Defense Appropriation Act, authorizes the Department of Defense, OCHAMPUS, to conduct an expanded Home Health Care Demonstration as part of an individualized case-managed and cost-effective range of benefits in up to four geographic areas for exceptionally serious, long-range, costly and incapacitating conditions. Outside the selected demonstration areas, the Home Health Care Demonstration directed and implemented in FY 1986 and 1987 shall be continued. This notice sets forth the general criteria for eligibility and approval under the expanded HHC Demonstration henceforth described as Project Coordinate Appropriate Resources Effectively—CARE.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Major Maureen Connors Potter, USA, Chief, Project CARE, Public and Beneficiary Relations Division, OCHAMPUS, Aurora, CO 80045–6900, (303) 361–4439.

SUPPLEMENTARY INFORMATION: Since 1986, OCHAMPUS has been conducting a demonstration of home health care as an alternative to hospitalization for active duty family members. A key feature of this demonstration has been individualized management of a patient's health care needs. OCHAMPUS has worked directly with patients, families, providers, and funding sources to develop a coordinated plan of care that meets patients' needs at less cost to the government. This process is known as case management and has become a common method used by private sector employers or a third-party payers to reduce the cost of health care for catastrophically ill patients.

Over the course of the Home Health Care Demonstration, a number of beneficiaries with very complex, high cost conditions who could have benefited from case management were identified who did not meet the restrictive criteria of the Home Health Care Demonstration.

In Fiscal Year 1988, Congress authorized an expansion of the Home Health Care Demonstration that permits CHAMPUS to broaden the criteria for accepting patients and to include all CHAMPUS beneficiaries—military retirees and their family members as well as active duty family members. Project Coordinate Appropriate Resources Effectively (CARE) represents the expansion of the Home Health Care Demonstration. It is intended to be a highly individualized and locally-based program that brings together the care coordination of case management with a greatly expanded provider and community relations activity not only to develop a cost-effective plan of care for catastrophically ill patients, but also to identify those providers and military and community resources that are willing and available to serve CHAMPUS beneficiaries, whether catastrophically ill or not.

Project CARE will develop and evaluate a model for case management, beneficiary and provider education, and appropriate resource utilization initially in a large urban area, a rural region, and a state offering significant state-funded services.

Although the statutory authority for this demonstration permits the expansion of the Home Health Care Demonstration in up to four geographic areas, Project CARE will be limited initially to three areas. The three demonstration areas are the Washington, DC, metropolitan area (including the State of Maryland, the District of Columbia and northern Virginia); the "Fitzsimons Region" (including the states of Colorado, Wyoming, South Dakota, North Dakota, Utah, Nebraska, Missouri, and Kansas); and Washington State.

A CARE Office will be located at each military hospital located within the demonstration area. The CARE Office will be supported by a case manager(s) and staffed full or part time with a health care resource manager (HCRM), and clerical support. Where possible, the CARE Office will be collocated with the CHAMPUS/Health Benefits Advisor(s) (HBA) to promote coordination of the services provided by these personnel.

Under Project CARE, case management is a system in which an individualized treatment plan is developed, implemented and evaluated in the context of a managed care system in the individual's community by a local or regionally-based case manager in coordination with the direct care system and the community-based multidisciplinary team of health care providers. Project CARE will provide case management services for high cost catastrophic conditions and serious chronic illness with complex medical needs. Mental disorders are specifically excluded from this demonstration as they are being addressed through a separate project.

In coordination with OCHAMPUS, the Fiscal Intermediaries (FI) may contract for case management services with a firm specializing in case management and provide HCRM personnel support, or the FI may provide the case management services directly through qualified and experienced in-house personnel.

The case manager will be community or regionally-based with a supportive network for consultation, supervision, quality assurance, utilization review and data anasysis. The case manager will provide goal-directed activities that organize, coordinate, and monitor service delivery based on measurable objectives intended to meet the needs of complex chronically or catastrophically ill individuals and their families. In order to accomplish this, the case manager will be a registered nurse or similarly qualified health care professional with clinically based knowledge and experience in working with multidisciplinary providers. The case manager will have demonstrated case management experience, to develop a community-based treatment plan which best meets the patient's and family's needs in the most cost-effective manner.

In addition to identifying new admissions with catastrophic and serious chronic illness conditions, potential Project CARE pataients will be identified through the following mechanisms:

Patients who have reached the catastrophic cap.

Cases identified through routine utilization review.

DRG long-stay and cost outliers.

Lengths of stay in excess of 30 days.

Where the primary or secondary diagnosis indicates serious complications.

Recurrent admissions or repeat admission(s) within a 60-day interval.

When total charges are expected to be or are in excess of $50,000 per fiscal year.

A CHAMPUS beneficiary who otherwise qualifies for the Program for the Handicapped may be transferred to Project CARE case management if the transfer is necessary and appropriate and if the sponsor or parent agrees to the transfer.

Patients will be accepted into case management when there is a reasonable expectation that the case manager can develop a plan of care, including all medically necessary services and supplies required by the beneficiary, that will be cost-effective compared to the usual CHAMPUS program including coordination of benefits with other health insurance. Patients not accepted into case management will be referred promptly to the HCRM for assistance with alternative resources.

If the case manager determines the case is not appropriate for case management, this decision is final; there is no appeal. The formal appeals process will not be available for Project CARE since care will continue under the CHAMPUS Program and there is no loss of an entitlement as otherwise covered services are not affected.

The case management treatment plan will be developed in collaboration with the primary care physician, multidisciplinary team of the hospital and community-based providers and the beneficiary or family. This treatment plan will be developed utilizing a standardized comprehensive protocol and will be implemented in a timely and appropriate manner.

Case managers may authorize payment for certain services, supplies, and equipment which are not otherwise covered when the alternative is cost-effective.

Medical and other durable equipment is authorized when ordered by a physician as necessary in the treatment of a beneficiary requiring transition from inpatient care to home or community-based care. Economy (rental versus purchase) will be given primary consideration in reviewing requests for equipment. Equipment may be provided while the patient is still an inpatient if a period of training is necessary before the transition can be accomplished.

Physician's services and case management authorized services will be paid as billed up to the prevailing limit, when available.

Cost-share will be based on the patient's actual inpatient or outpatient status at the time the care is provided. All home care, whether or not in lieu of hospitalization, will be cost-shared as outpatient care. Cost-shares for case-managed services will apply to the catastrophic cap.

Case managers will attempt in all cases to authorize care only from preferred providers. If an appropriate preferred provider is not available, the case manager will coordinate with the HCRM in attempting to negotiate a favorable price on a patient-specific basis.

In order to implement the program effectively, case management must be supported by a local resource serving as the critical link between beneficiaries, the military treatment facility (MTF), the civilian health care community and case management. The HCRM acting as an extension of the Fiscal Intermediary (FI) field representative, will facilitate early identification and referral of beneficiaries who may be eligible for case management. Additionally, the HCRM becomes the focal point for those beneficiaries not qualifying for or requiring case management. The HCRM conducts community liaison with local, state, and federal agencies responsible for financing alternatives which our beneficiaries may be entitled to receive. This enables the HCRM to assist our beneficiaries with the financing of care not available from the MTF or as a benefit of CHAMPUS. The HCRM is responsible for knowing how to access and utilize military and local, state, and federal health and financing resources in the community. The HCRM is responsible for obtaining signed agreements from preferred providers (those who agree to discount their fees for military beneficiaries) and participating providers (those who agree to accept the CHAMPUS-determined allowable charge as payment in full) and for maintaining and providing listings of these providers and resources to case management, beneficiaries, and the MTF comanders. The HCRM as a local on-site FI representative will work extensively with providers to encourage participation and assist with problem resolution.

Case management and HCRM should provide a combination which effectively manages resources through the use of a case management system and specific efforts to identify preferred and participating providers. This approach supports coordination of services and resources with the MTF and the civilian community. These strategies are intended to improve provider access, reduce administrative tasks for our beneficiaries, increase beneficiary satisfaction and improve cost-effectiveness with emphasis on high-cost catastrophic and serious chronic illnesses.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1988.

[FR Doc. 88-12539 Filed 6-2-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review; Request for Verification of Birth

ACTION: Notice.

The Department of Defense 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).

Title, Applicable Form, and Applicable OMB Control Number: Request for Verification of Birth; DD Form 372; and OMB Control Number 0704-0006.

Type of Request: Extension.

Annual Burden Hours: 13,016.

Annual Responses: 156,200.

Needs and Uses: Title 10, 505, U.S. Code restricts enlistment into the U.S. Armed Services, to able bodied persons not less than 17 years of age and not more than 35 years of age. If an applicant is unable to provide a birth certificate the "Verification of Birth" form is dispatched to the respective Bureaus of Vital Statistics. This occurs for approximately one of every two applicants for enlistment into the U.S.Armed Services.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1988.

[FR Doc. 88–12537 Filed 6–2–88; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review; DoD FAR Supplement

ACTION: Notice.

The Department of Defense 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).

Title, Applicable form, and Applicable OMB Control Number: DoD FAR Supplement, Part 70, Acquisition of Computer Resources; Part 52.270; DD Form 1851; and OMB Control Number 0704–0254.

Type of Request: Revision.

Annual Burden Hours: 124,990.

Annual Responses: 6,362.

Needs and uses: The required reporting requirements from the clauses at 252.270 are required for the acquisition of computer resources. The required reporting requirement on DD Form 1851 is needed to determine if Automated Equipment can be acquired through the AE Reutilization Program.

Affected Public: Businesses or other for profit; Non-profit institutions; and Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1988.

[FR Doc. 88–12538 Filed 6–2–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 16 June 1988 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34–R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before 3 June 1988.

Date: May 20, 1988.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88–12482 Filed 6–2–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Innovative Control Technology Advisory Panel; Clean Coal Technologies Inventory Subcommittee; Open Meeting

Name: Clean Coal Technologies Inventory Subcommittee of the Innovative Control Technology Advisory Panel (ICTAP).

Date and Time: June 17, 1988—9:00 a.m.–1:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Sandy Guill, Office of Environment, Safety and Health, Washington, DC 20585, (202) 586–4628.

Purpose of the Parent Board

To advise the Secretary of Energy and provide recommendations concerning innovative control technologies that will broaden cost-effective and efficient options for controlling precursor emissions associated with acid deposition.

Purpose of Panel

The Clean Coal Technologies Inventory Subcommittee is a subgroup of ICTAP and reports to the parent board. The panel will identify gaps in technology development and deployment. Specifically, this study will include an inventory of U.S. and foreign technologies and projects. The study will contain assessments of applicability, economic viability and environmental performance.

Tentative Agenda

9:00 a.m.—Discussion and Presentations Regarding Inventory of U.S. and Foreign Technologies and Projects.

12:50 p.m.—Public Comment (10 minute rule).

1:00 p.m.—Adjourn.

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting

Available for public review and copying at the Freedom of Information

Public Reading Room, 1E–190, Forrestal Building, 1000 Independence 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. 88–12515 Filed 6–2–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–09–NG]

Bonus Gas Processors, Inc.; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Bonus Gas Processors, Inc. (Bonus), blanket authorization to import natural gas. The order issued in ERA Docket No. 88–09–NG authorizes Bonus to import up to 219 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 27, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–12514 Filed 6–2–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–24–NG]

Western Gas Marketing U.S.A. Ltd.; Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 20, 1988, of an application filed by Western Gas Marketing U.S.A. Ltd. (Western) to import up to 300 Bcf of Canadian natural gas and export up to 100 Bcf of natrual gas over a two-year term beginning on the date of first delivery after expiration of Western's existing blanket import authorization. Western is currently authorized to import up to 300 Bcf of Canadian natural gas through November 30, 1988. Western, a Delaware corporation, is a wholly-owned subsidiary ot TransCanada PipeLines Limited (TransCanada). Western would import or export gas for its own account or act as a broker for both U.S. and Canadian purchasers and suppliers. Western intends to utilize existing pipeline facilities for transportation of the volumes to be imported or exported. Western also proposes to submit quarterly reports detailing each transaction.

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 July 5, 1988.

FOR FURTHER INFORMATION:

Stanley Vass, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–976, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9480.

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: Under the new blanket import and export authority sought, Western intends to make natural gas sales to either United States or Canadian customers on both a firm and interruptible spot basis. The specific terms of each import or export sale would be negotiated on an individual basis, including price and volume. Western asserts that the sale of Canadian natural gas imports will be made pursuant to terms reflecting existing market conditions and the needs of individual purchasers and that surplus natural gas supplies will be exported to Canada on the basis of their competitiveness and need by U.S. purchasers. Western also asserts that the proposed import will encourage a bidirectional flow of natural gas across the U.S./Canada border at competitive prices and help achieve a more competitive distribution of supplies between the U.S. and Canada. Western's prior quarterly reports with the ERA indicate that approximately 23.731 Bcf of natural gas were imported under Western's current import authorization as of December 31, 1987.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Adminsitrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the import authority and on the domestic need for the gas in their responses on the requested export authority. The applicant asserts that this import and export arrangement will be in the public interest in that the pricing terms for each import or export sale must be competitive in the U.S. and Canadian gas markets served or no sales will be made. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import and export, it may permit the import or export of the gas at any existing point of entry or exit and through any existing transmission system. In addition, the ERA will condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to his 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., July 5, 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 Sec. 590.316.

A copy of Western'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, May 25, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-12494 Filed 6-2-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-88-3; OFP Case No. 51025-9393-20-22]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Ft. Pierce Utility Authority

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: On January 6, 1988, Ft. Pierce Utility Authority (Ft. Pierce or petitioner), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42. U.S.C. 8301 *et seq.*) for a 34.5 megawatt combined cycle cogeneration facility located in Ft. Pierce, Florida. Title II of the Act prohibits the use of petroleum and natural gas as a primary energy source in a new powerplant and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found in 10 CFR 503.32

Pursuant to section 212(g) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at Ft. Pierce's H.D. King Generating Station.

The basis for ERA's Order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on August 2, 1988.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs (RG-22), Department of Energy, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-9624.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 586-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent powerplant exemption to use natural gas or oil as a primary energy source in its facility located in Ft. Pierce, Florida.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 591.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on February 1, 1988 (53 FR 2776), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

Copies of the petition were provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 701(f) and 313(b)(2) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on March 17, 1988; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(g) of FUA,

ERA hereby grants the petitioner's permanent exemption for the powerplant to be installed at its facility in Ft. Pierce, Florida, permitting the use of natural gas or oil as a primary energy source in the unit. Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on May 18, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-12495 Filed 6-2-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP88-1-000]

Division of Producer Regulation v. Phillips 66 Natural Gas Co.; Complaint

May 31, 1988.

On October 2, 1987, the Commission's Division of Producer Regulation (Staff) filed a complaint pursuant to 18 CFR 271.1105(d)(2) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Staff alleges that Phillips 66 Natural Gas Company (Phillips) has calculated and received reimbursement for production-related costs in excess of that permitted by § 271.1104 and by the applicable gas sales contract. Specifically, Staff disputes Phillips' collection of a contract allowance for gathering and compression calculated on total quantities of gas delivered at the outlet of a gas processing plant in lieu of being calculated on a well-by-well basis. Staff requests the Production-Related Costs Board (Board) to find that Phillips' method of calculating production-related costs is in violation of § 271.1104 and to order refunds.

Staff states that Phillips is selling gas to Panhandle Eastern Pipe Line Company (Panhandle) under Phillips' contract No. GCF 6088 (Contract) dated March 6, 1979. The Contract provides that Panhandle will pay Phillips 24.0 cents per Mcf, plus compressor fuel, as an allowance for gathering and compression, for all volumes of gas delivered at either of two locations. During an audit of Phillips, Staff discovered that many wells were assigned a section 110 allowance in excess of the 24.0 cents rate permitted by the contract. When contacted by Staff, Phillips stated that the intent of the contract is that the 24.0 cents rate applies to total volumes delivered. Panhandle concurs with Phillips.

Staff asserts thatPhillips has been collecting a price for production-related costs in excess of the 24.0 cents contract rate for certain wells. In addition, Staff states that if by using the generic approach on a well-by-well basis a well is entitled to less than the 24.0 cents rate, then § 271.1104 permits Phillips to collect only the lesser generic rate.

In support of its claim, Staff states that § 271.1104(f) requires production-related cost charges to be described on a well-by-well basis. Further, § 271.1104(d)(1) makes it clear that the amount necessary to recover a production-related expense is the lesser of an expressly authorized contract amount or the generic allowances as specified in § 271.1104(d)(1)(i)-(iv). In addition, Staff claims that responses from Phillips acknowledge that generic allowances in excess of 24.0 cents per Mcf had been calculated and assigned to some wells.

Staff claims that correspondence with Phillips has produced unsatisfactory results concerning the proper amounts which may be collected for production-related costs under the contract and that Phillips has concluded that no refunds are due. Additionally, Staff states that Phillips has requested the right to participate, with full rights as a party, in any hearing that may arise if the matter is referred to the Board. Therefore, Staff requests the Board to determine that Phillips is in violation of § 271.1104 and issue an order requiring Phillips to refund amounts collected for production-related costs in excess of that permitted by the Regulations.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Phillips must file an answer to Staff's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Phillips shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12512 Filed 6-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS88-51-000, et al.]

VAC Petroleum Co., Inc., et al.; Applications for Small Producer Certificate [1]

June 1, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessarity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date Filed	Applicant
CS88-51-000....	[1] 4-18-88	VAC Petroleum Co., Inc., P.O. Box 780106, Wichita, KS 67278-0106.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date Filed	Applicant
CS88-59-000....	[2] [3] 3-29-88	Sloan Group c/o Baker & Botts, 555 13th Street, N.W., Suite 500 East, Washington, DC 20004-1109.
CS88-61-000....	4-21-88	Faubion Oil & Gas Corp., Suite 4490, 333 Clay Street, Houston, TX 77002.
CS88-62-000....	[4] 4-22-88	James A. Gibbs, 1106 One Energy Square, Dallas, TX 75206.
CS88-64-000....	[5] 5-9-88	Camel Oil & Gas (U.S.) Inc., 350, 708—11th Avenue S.W., Calgary, Alberta, Canada T2R OE4.
CS88-65-000....	4-29-88	Maple Properties Corp., P.O. Box 5427, T.A, Denver, Co 80217-5427.
CS88-66-000....	5-4-88	L&M Oil Co., 1144 Two Energy Square, Dallas, TX 75206.
CS88-67-000....	[6] 5-6-88	Agree Oil Co., *et al.*,[7] 401 W. Texas, Suite 810, Midland, TX 79701.
CS88-68-000....	5-17-88	Holliday Drilling, Inc., P.O. Box 3489, Midland, TX 79702.

[1] Application received March 7, 1988. Filing date is date of receipt of filing fee.
[2] Additional material received April 20 and May 10, 1988.
[3] Applicant states that the Sloan Group is comprised of Anna Lou Home; Anne Lou Home Emmerson; Teresa Home; Jean E. Keyser; Cassandra Keyser; and James Montague and Anna May Colwill, Co-Executors of the Estate of Charles W. Colwill, who are affiliated for the purposes of 18 CFR 157.40(a)(3).
[4] Application was initially filed under the name of Five States Limited—1987. By letter dated May 11, 1988, received may 16, 1988, the application was amended to reflect James A. Gibbs as the applicant for small producer certificate.
[5] Application received April 12, 1988. Filing date is date of receipt of filing fee.
[6] Additional material received May 17, 1988.
[7] The *et al.* parties are: R.S. Guenther; John P. Oil Company; CEB Oil Company; EAB Oil Company; PVB Oil Company; Black Bear Oil & Gas Co.; Ben K. Smith; Audrey Baker; Argee Oil Company, Trustee; James R. Leeton, Jr. and Mary E. Leeton.

[FR Doc. 88-12513 Filed 6-2-88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3391-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 16, 1988 through May 20, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP. No. D-AFS-K61092-CA, Rating EC2, Mr. Shasta Ski Area Development, Special Use Permit, Shasta-Trinity National Forest, Mt. Shasta Ranger District, Siskiyou County, CA.

Summary

EPA has concerns about the on-site disposal of wastewater, and requests further information on the cumulative impacts of the project.

ERP. No. D-AFS-L65117-OR, Rating EC2, Williamette National Forest, Land and Resource Management Plan, Implementation, Clackamas, Lane, Douglas, Jefferson, Linn and Marion Counties, OR.

Summary

EPA's primary concern with this document is that Standards and guidelines for water and a water quality monitoring plan needs to be more fully developed in the final.

ERP. No. D-AFS-L65120-OR, Rating EC2, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR.

Summary

EPA's primary concern with this project is that the Standards and Guidelines for water and a water quality monitoring plan needs to be more fully developed in the final EIS/plan.

ERP. No. DA-COE-A36364-LA, Rating LO, Lake Pontchartrain and Vicinity Hurricane Protection Project, Fish and Wildlife Mitigation Plan, Implementation, Jefferson, St. John the Baptist, St. Charles, Orleans and St. Bernard Parishes, LA.

Summary

EPA expresses no objections to the proposed alternative as described in the draft EIS. EPA supports the implementation of Plan 0, the Tentatively Selected Plan for mitigation.

ERP. No. D-MMS-A02222-00, Rating EC2, 1989 North Atlantic Planning Area Outer Continental Shelf (OCS) Oil and Gas Sale No. 96, Lease Offerings, MA, NH, ME, RI, CT, NY and NJ.

Summary

EPA recommended that certain deferral areas (additional canyon heads, traffic safety fairways, waters deeper than 2,000 meters, and areas in the shelf-break zone) be eliminated from this sale. EPA also strongly recommends that any development and production from this or future North Atlantic lease sales be preceded by development and production EISs.

(Note: The above summary should have appeared in the 5-20-88 FR Notice.)

ERP. No. D-SFW-L64038-AK, Rating EC2, Arctic National Wildlife Refuge, Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, AK.

Summary

EPA has concerns that this document provides no discussion of how the Comprehensive Conservation Plan implementation might change if federal and state funding are less than required. Secondly, the impacts to threatened and endangered species are not evaluated as a separate resource category. EPA feels because of uncertainty about what future activities will be allowed under the preferred alternative, the final EIS needs to commit to a NEPA public review process if major changes to the CCP are considered during periodic reviews in the future.

ERP No. D-SFW-L64039-AK, Rating LO, Alaska Maritime National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Implementation and Wilderness Recommendations, Forrester Island to near Barrow on the Arctic Ocean, AK.

Summary

EPA has no objections to the proposed activities as described in this document. The preferred alternative would provide reasonable protection for refuge resources and values while providing flexibility for a variety of uses in localized areas that are already experiencing more intensive human use.

ERP No. D-USA-F11013-MN, Rating EC2, Camp Ripley Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Morrison County, MN.

Summary

EPA's concerns relate to the project's potential impacts upon wetlands and air quality. EPA seeks a commitment to prepare additional environmental documents for public review for individual projects affecting wetlands. EPA would also like to review the upcoming detailed study regarding

future handling of solid waste at the Camp.

Final EISs

ERP No. F-AFS-L65107-OR, Bull Run Blowdown, Wind Damage Trees Management Plan, Implementation, Mt. Hood National Forest, Clackamas, Hood River and Multnomah Counties, OR.

Summary

EPA has no objections to the project as proposed.

ERP No. F-BLM-J02012-WY, Sohare Creek Unit Exploratory Oil Well No. 1-35, Approval and Permits, Bridger-Teton National Forest, Teton County, WY.

Summary

EPA notes satisfactory responses to some issues raised in the review of the draft EIS, but concerns remain on plans/measures/thresholds to document water quality standards compliance; documentation for the cumulative impacts analysis and determinations of no significant impacts to fisheries; and the Forest Service policy for restoration of in-stream impacts. Contrary to the cover sheet of the EIS, EPA was not a cooperating agency.

ERP No. F-FAA-B51012-CT, Groton-New London Airport Runway 5 Medium Intensity Approach Lighting System Installation, Funding, City and Town of Groton, CT.

Summary

EPA has found this project to be satisfactory.

ERP No. F-NPS-J70015-00, Fishing Bridge Developed Area, Development Concept Plan, Implementation, Yellowstone National Park, Fremont County, ID, Park and Gallatin Counties, MT and Park and Teton Counties, WY.

Summary

EPA has no objections to the project for reducing human/bear confrontations as proposed.

ERP No. F-UAF-K21002-GU, Uruno Beach (Urunao Beach) Cleanup Program, Implementation, Guam.

Summary

EPA requests that the Record of Decision consider the proposed action's compliance with several U.S. and Guam laws governing hazardous substances, and that the ROD contain a commitment that all Federal and Guam Environmental Protection requirements will be followed if hazardous substances are discovered in the project area.

Dated: May 31, 1988.

Anne Norton Miller,

Acting Director, Office of Federal Activities.

[FR Doc. 88-12590 Filed 6-2-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3391-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed May 23, 1988 Through May 27, 1988 Pursuant to 40 CFR 1505.9

EIS No. 880164, Draft, AFS, CA, South Fork Fire Recovery and Salvage Project, August Thru October 1987, South Fork Roadless Area Land and Resource Management Plan, Implementation, Shasta-Trinity National Forest, Trinity County, CA, Due: July 18, 1988, Contact: Dan Angello (916) 628-5227.

EIS No. 880165, Draft, SCS, NV, East Walker Watershed Project, Water Management Improvement and Sediment Deposition Reduction, Funding and Implementation, Lyon County, NV, Due: July 18, 1988, Contact: Charles R. Adams (704) 784-5863.

EIS No. 880166, Draft, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Coastal Plain/Piedmont National Forests and Grasslands Vegetation Management Plan, Implementation, US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS, and TX, Due: August 25, 1988, Contact: Steve McCorquodale (404) 347-7076.

EIS No. 880167, DSuppl, SEW, AK, Kanai National Wildlife Rufuge Comprehensive Conservation Management Plan, Wilderness Recommendations, Designation or Nondesignation, Kenai Peninsula Borough, AK, Due: July 18, 1988, Contact: David Heffernan (202) 343-1014.

EIS No. 880168, Draft, COE, CA, Ox Mountain Sanitary Landfill Expansion, Apanolio Canyon Site, 404 Permit, Apanolio Creek, San Mateo County, CA, Due: July 18, 1988, Contact: Barney Opton (415) 974-0442.

EIS No. 880169, DSuppl, COE, WA, Chehalis River Flood Control Project, South Aberdeen and Cosmopolis, Design Modifications, Implementation, Grays Harbor County, WA, Due: July 18, 1988, Contact: Forest Brooks (206) 764-3456.

EIS No. 880170, DSuppl, UPS, NY, Manhattan General Mail Facility Complex Development, Additional Alternative Analysis Study, Implementation, New York City, New York County, NY, Due: July 18, 1988, Contact: Charles Vidich (203) 285-7254.

EIS No. 880171, Final, COE, IA, Des Moines Recreational River and Greenbelt Area Development, Operation and Maintenance, Implementation, Webster, Hamilton, Boone, Dallas, Polk, Warren, Marion, Jasper and Mahaska Counties, IA, Due: July 5, 1988, Contact: Mike Cockerill (309) 788-6361.

EIS No. 880172, Draft, FHW, OH, OH-297/Whippe Avenue Improvement, US 30 Interchange at Raff Road/Whippe Avenue/OH-297 to I-77 Interchange at Everhard Road, Funding, Stark County, OH, Due: July 18, 1988, Contact: James Steele (614) 469-6896.

Dated: May 31, 1988.

Anne Norton Miller,

Acting Director, Office of Federal Activities.

[FR Doc. 88-12591 Filed 6-2-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-000015-007

Title: Port of New Orleans Terminal Agreement

Parties: Board of Commissioners of The Port of New Orleans Continental Grain Company (Continental)

Synopsis: The agreement amends the basic agreement to terminate Continental's first call on berth privilege affecting the barge mooring area at Westwego, Louisiana.

Agreement No.: 224-200123

Title: South Carolina State Ports Authority Terminal Agreement

Parties: South Carolina State Ports Authority (SCSPA) Sea-Land Service, Inc. (Sea-Land)

Synopsis: Pursuant to this agreement SCSPA grants Sea-Land exclusive use of 40 acres to be used for container shipping operations and preferential use of a container berth and up to three container cranes for specified days of the week.

By Order of the Federal Maritime Commission

Dated: May 31, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-12553 Filed 6-2-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Clyde Financial Corp., et al.; Formation 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 June 27, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Clyde Financial Corporation,* Clyde, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples State Bank, Clyde, Texas.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Commercial Bancshares, Inc.,* Jasper, Alabama; to merge with Cahaba Bancorp, Trussville, Alabama; and thereby indirectly acquire Cahaba Bank & Trust, Trussville, Alabama.

Board of Governors of the Federal Reserve System, May 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-12463 Filed 6-2-88; 8:45 am]

BILLING CODE 6210-01-M

Delhi Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act 12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, cush as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Delhi Bancshares, Inc.,* Traer, Iowa; to become a bank holding company by acquiring Manchester Insurance Service, Manchester, Iowa; and thereby engage in property and casualty insurance, accident and health insruance, crop and hail insurance, and life insurance and annually products, pursuant to §§ 225.25(b)(8)(iii) and 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-12464 Filed 6-2-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 27, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Provider for Reimbursement Manual, sections 2721, 2722, and 2725 Requests for Exception to End Stage Renal Disease Composite Rates—0938-0396—sections 2721, 2722 and 2725 provider reimbursement manual describes the information that End Stage Renal Disease facilities must submit to justify an exception request to their composite rate. Respondents: Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 150; Frequency of Response: One-time; Estimated Annual Burden: 7,200 hours.

2. End Stage Renal Disease Facility Survey—0938-0447—This form is completed annually by all Medicare approved ESRD facilities. The form is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients. Respondents: Businesses or other for-profit. Number of Respondents: 1,701; Frequency of

Response: Annually; Estimated Annual Burden: 2,551 hours.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Certification by Religious Group—0960–0093—The informaiton is needed to determine whether or not a specific religious group and it's members qualify for the self-employment tax exemption. Respondents: Individuals or households, Non-profit institutions. Number of Respondents: 180; Frequency of Response: One-time; Estimated Annual Burden: 45 hours.

2. Statement of Self-Employment Income—0960–0046—The information is needed to determine if an applicant will have at least the minimum amount of self-employment income for 1–4 quarters of coverage in the current year. Respondents: Individuals or households. Number of Respondents: 5,000; Frequency of Response: One-time; Estimated Annual Burden: 416 hours.

3. Application for Lump-Sum Death Payment—0960–0013—The information is used to determine the eligibility of an applicant for the lump-sum death payment and to whom it should be paid. Respondents: Individuals or households. Number of Respondents: 735,000; Frequency of Response: One-time; Estimated Annual Burden: 122,500 hours.

4. Claimant's Statement when Request for Hearing is Filed and the Issue is Disability—0960–0316—The information is needed to determine a claimant's eligibility for disability insurance benefits. The affected public is comprised of individuals who request a hearing before an Administrative Judge and the issue is disability. Respondents: Individuals or households. Number of Respondents: 276,000; Frequency of Response: One-time; Estimated Annual Burden: 69,000 hours.

5. Residual Functional Capacity Assessment—Mental Residual Functional Capacity Assessment—0960–0431—The data on these forms provides the State Agency medical consultants with information they need to properly assess a claimant's mental or physical ability to perform work-related functions. This information is used by the consultants to help them make disability determinations for SSA. Respondents: State or local governments. Number of Respondents: 55; Frequency of Response: Occasionally; Estimated Annual Burden: 447,315 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

1. FY 1988 Summer Grantee Survey of the Low Income Home Energy Assistance Program—0970–0076—This survey obtains updated estimates of Federal and non-Federal funding sources, uses of funds, and households to be assisted during FY 1988. The information will be displayed in tables for an information memorandum to Congress. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: Annually; Estimated Annual Burden: 102 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

1. Teenage Parent Demonstration Case Manager Questionnaire—NEW—This survey will be administered to all case managers in the teenage parent demonstration programs and will provide information with which to assess the importance of the backgrounds, and experiences of case managers to the success of the intervention. Respondents: State or local governments. Number of Respondents: 70; Frequency of Response: Single-time; Estimated Annual Burden: 35 hours.

OMB Desk Officer: Elaina Norden.

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415)

1. Case Plan, section 475(5)(A) of the Social Security Act—0980—0140—Provides incentive payments to States which meet specific foster care protections described in section 475(5)(A). Among those protections is implementation and operation of a case plan which is designed to achieve placement in a more family like setting. Respondents: State or local governments. Number of Respondents: 270,000; Frequency of Response: One-time; Estimated Annual Burden: 1,080,000 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

National Institutes of Health

1. Survey of Physician's Practice Behaviors Related to the Prevention of Lung Disease—NEW—A random sample of physicians practicing in five specialties will complete mailed questionnaires concerning their assessment and intervention behaviors regarding lung "diseases." Analysis of collected data will produce a model of physicians' intervention behaviors for NHLBI use in developing physician and public educational programs to reduce lung disease morbidity and mortality. Respondents: Non-profit institutions, Small businesses or organizations. Number of Respondents: 2,000; Frequency of Response: Single-time; Estimated Annual Burden: 1,000 hours.

Food and Drug Administration

1. Human Factors Regarding the Use of Glucose Monitoring Equipment—NEW—FDA needs information regarding diabetic and educational user operation of portable, electronic blood glucose meters. Medical Device Reporting System suggests problems in operation of equipment attributable to inadequacies in assessing problem areas and making recommendations for improved procedures and new equipment design. Respondents: Individuals or households. Number of Respondents: 626; Frequency of Response: One-time; Estimated Annual Burden: 707 hours.

Health Resources Services Administration

1. Survey of Health Education Assistance Loan (HEAL) Defaulters—NEW—The HEAL Defaulters survey will be used to provide information on the factors that affect HEAL recipients' ability to repay their loans. Respondents: Individuals or households. Number of Respondents: 2,500; Frequency of Response: One-time; Estimated Annual Burden: 825 hours.

Centers for Disease Control

1. National Ambulatory Medical Care Survey—NEW—Data collected from office-based physicians concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health manpower assessment, epidemiologic studies, and other medical care utilization research. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 2,600; Frequency of Response: Occasionally; Estimated Annual Burden: 3,683 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the

Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. ATTN: (Name of OMB Desk Officer).

Dated: May 31, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–12531 Filed 6–2–88; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Cooperative Agreements Project Grants for Chronic Disease Control Program Announcement and Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for competitive applications for cooperative agreements and/or project grants for the development of demonstration Chronic Disease Control Programs. The demonstration projects will address planning, development, integration, coordination, or evaluation of programs to control chronic disease(s). The project may address more than one activity or disease.

Authority

These cooperative agreements and/or grants are authorized by section 301 (a) (42 U.S.C. 241(a) and section 317(k)(3) (42 U.S.C. 2476(K)(3) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of States, and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Background

Chronic diseases are the leading cause of death and long-term disability in industrialized societies. The impact of chronic disease in terms of death rates, years of potential life lost, hospitalization, and selected measures of disability and economic burden is well documented. Effective preventive measures could avert a substantial portion of the burden of chronic diseases. Community cardiovascular disease interventions, screening programs for early detection and treatment of breast and cervical cancer, smoking cessation programs, school health curricula, and diabetes control programs to name a few, have all demonstrated the potential to reduce the impact of chronic diseases.

The key to successful efforts directed at chronic diseases is the effective and integrated application of: Surveillance, applied epidemiology, laboratory sciences, evaluation, and health education; dynamic and productive relationships with state and local organizations; training; and extensive applied management of effective disease control programs.

Ideally, an integrated program should comprehensively address all major chronic diseases. Similarly, primary prevention efforts should encompass all modifiable major risk factors. For some diseases and risk factors, effective interventions currently exist that should form the basis for initial programmatic efforts. However, interventions available for certain critical risk factors are of limited effectiveness. Moreover, for some chronic diseases, neither modifiable risk factors nor effective preventive measures are known. Clearly different diseases and risk factors are at different steps in the process of translation from research into applied prevention practice; some areas are ready for implementation and evaluation, while significant applied research is necessary to effectively address other important chronic disease problems. For still others we must await the results of ongoing basic research.

Setting priorities among the many conditions defined as "chronic," includes using, for example, estimates of disease burden and severity (mortality, morbidity, disability days, etc.) and preventability (primary, secondary, and tertiary). For the purposes of this announcement, the applications should focus on:

1. High priority chronic diseases, e.g., cancers (lung, breast, or cervical); cardiovascular disease (ischemic heart disease, cerebrovascular); diabetes and its complications; chronic obstructive lung disease; etc.

2. The key modifiable risk factors for high priority disease, e.g., smoking, hypertension, hyperlipidemia, sedentary lifestyle, etc.

or

3. General capacity building for strong chronic disease programs in such areas as surveillance, integration of currently fragmented activities, and the building of coalitions/advisory groups to address high priority conditions or risk factors.

Purpose and Programmatic Interest

The purpose of this cooperative agreement/project grant program is to promote the ability within State public health agencies to prevent and control chronic disease. Projects should address one or more of the following goals for the selected disease(s) and/or their related risk factors:

A. To foster and mobilize a coalition of public and private agencies committed to a common agenda for the prevention and control of one or more chronic diseases or chronic diseases in general. The coalition should operate at the state and/or local level(s) and should include professional, voluntary, and/or other private sector organizations, as well as State and local public health agencies. The coalition should assist the state and local health agencies in setting priorities, planning interventions, and in evaluating the effectiveness of chronic disease programs.

B. To conduct chronic disease surveillance of local or state trends in morbidity and mortality to identify and rank public health efforts, generate hypotheses relevant to their prevention and control, and evaluate the effectiveness of intervention programs. This can be aimed at a single disease, although multiple data sources should be used.

C. To conduct applied research such as epidemiologic studies, operational research, and laboratory investigations to identify opportunities for preventive actions.

D. To demonstrate the impact and/or evaluate the effectiveness of chronic disease intervention programs in collaboration with other State and local agencies and other appropriate groups. Demonstrations which emphasize an integrated approach to diseases risk factors and which plan for institutional changes to sustain programs over time will be given priority.

E. To provide education for health professionals to facilitate widespread

implementation of effective intervention strategies.

F. To conduct directed information and education programs for the prevention and control of chronic diseases. This should be targeted toward specific high risk groups, e.g. minorities, specific age groups, etc. and should include evaluation.

G. To develop and implement a chronic disease program which addresses more than one of the above listed goals.

H. To develop and test marketing strategies designed to improve utilization of services directed at the prevention and control of chronic diseases or risk factors.

Program Requirements

A. Cooperative Agreement

In a cooperative agreement, CDC will assist the State in conducting the project. The application should be presented in a manner that demonstrates the applicant's ability to conduct the activity in a collaborative manner with CDC.

1. Recipient Activities

Due to the nature of the cooperative agreement, and the diversity of projects that may be approved, activities may vary. For example, a project that will demonstrate an intervention directed at a single chronic disease will have different activities than a project that will utilize an advisory committee to assist the State in developing its own priorities in the control of chronic diseases. However, some general activities would be expected for any applicant. These include:

a. Identify sufficient appropriately trained staff to conduct the proposed activities.

b. Conduct the activities described in its application in a manner that will ensure accomplishment of objectives.

c. Where appropriate, conduct a strong, scientifically based evaluation designed to determine the effectiveness of the activities.

2. Centers for Disease Control Activities

In addition to the financial support provided, CDC can provide assistance to the State by:

a. Collaborating in the design and development of methods for data collection and data analysis that can be adapted to future programs.

b. Collaborating in the data analysis and evaluation of projects.

c. Providing consultation and guidance in the development of study protocols, consent forms, training and questionnaires as necessary.

d. Providing consultation in describing the epidemiology of the specific disease(s) selected.

e. Serving in an advisory capacity to coalitions, in community intervention programs, etc.

B. Project Grant

A project grant application should be designed to improve the core capacity of the State Health Agency to prevent and control chronic disease, as described in "Purpose and Programmatic Interest." As is described in the PHS Grants Policy Statement, the applicant should not expect substantial programmatic involvement from CDC during the project. The application should be presented in a manner that demonstrates the applicant's ability to conduct the project without substantial involvement from CDC.

C. Determination of Which Instrument To Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. CDC will review the applications in accordance with the appropriate criteria. Projects funded through a cooperative agreement that involve collection of information from 10 or more respondents will be subject to review under the Paperwork Reduction Act.

Availability of Funds

Approximately $600,000 to $1,500,000 will be available in Fiscal Year 1988 to fund up to 10 projects. Individual awards will range from $35,000 to $125,000. It is expected that the cooperative agreements/projects grants will begin on or about September 1, 1988. Depending on the availability of funds, it is expected that further awards will be made in subsequent years. Cooperative agreements/project grants are usually funded in 12-month budget periods within a 1–5 year project period. Funding estimates may vary and are subject to change.

Projects are intended to be short term and address specific problems as noted in "Purpose and Programmatic Interest." Non-federal funding sources should provide greater shares of support in any later budget period.

Use of Funds

Cooperative agreement/project grant funds shall not be used for treatment or treatment services.

Review and Evaluation Criteria

Applications will first be grouped by the chronic disease(s) they address. Applications will be reviewed and ranked with other applications in that specific chronic disease category. A separate category will be established for projects addressing multiple diseases. Applications will be reviewed and evaluated based upon the following criteria:

1. Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement/project grant.

2. Consistency of the application with the stated programmatic interests of the CDC.

3. The consistency of the measureable objectives with the stated purpose of the cooperative agreement/project grant and the ability to meet the objectives and timetable within the specified period.

4. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.

5. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement/project grant funds.

6. The applicant's capability to provide the staff and resources necessary to perform and manage the project.

Application Submission and Deadline

The original and two copies of the application form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 1, 1988.

A. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or;

2. 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.)

B. Late Applications: Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372,

International Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, telephone (404) 842-6575 or FTS 236-6575.

Technical assistance may be provided by several Centers, Institutes, and Program Offices within CDC, this effort is being coordinated by Charles Gollmar, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, telephone (404) 639-1851 or FTS 236-1851.

Dated: May 26, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-12469 Filed 6-2-88; 8:45 am]

BILLING CODE 4160-18-M

A Workshop on Prevention of Health and Ergonomic Problems in VDT/Office Work; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: August 8-11, 1988.

Time:

August 8-7:00 am-9:00 pm
August 9-8:00 am-5:00 pm
August 10-8:00 am-5:00 pm
August 11-8:00 am-12:00 noon

Place: Marcum Conference Center, Miami University, Oxford, Ohio.

Purpose: To identify proven techniques that can be applied for the control of health and ergonomic problems arising from VDT/office work.

Additional information may be obtained from: Steven L. Sauter, Ph.D., Chief, Motivation and Stress Research Section, Applied Phychology and Ergonomics Branch, 4676 Columbia Parkway, Mail Stop C-24, Cincinnati, Ohio 45226, Telephones: FTS: 684-8293, Commercial: 513/533-8293.

Or

Marvin Dainoff, Ph.D., Department of Psychology, Miami Universtiy, Oxford, Ohio 45056, TELEPHONE: 513/529-2414.

Dated: May 27, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-12467 Filed 6-2-88; 8:45 am]

BILLING CODE 4160-19-M

"Symposium on Assessing Reproductive Hazards in the Workplace"; Open Meeting

The following symposium will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: June 16-17, 1988.

Time: 8 a.m.-5 p.m., June 16-17, 1988.

Place: OMNI Netherland Plaza, 35 W. 5th Street, Cincinnati, Ohio 45202.

Purpose: The topics that will be discussed will include: Completed studies assessing reproductive indicators in both male and female workers; potentially useful new methodologies for the analysis of reproductive effects; evaluation of potential reproductive toxicants by the National Toxicology Program (NTP), Environmental Protection Agency (EPA), and NIOSH; and regulation of reproductive toxicants by the EPA, Food and Drug Administration (FDA), and Occupational Safety and Health Administration (OSHA).

Additional information may be obtained from: Dr. Steven Schrader, Ph.D., National Institute for Occupational Safety and Health, Robert A. Taft Laboratories (C-23), 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8210, Commercial: (513) 533-8210.

Dated: May 27, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-12468 Filed 6-2-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 78G-0310]

General Bioscience, Inc.; Denial Without Prejudice of GRAS Affirmation Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying without prejudice a petition (GRASP 8G0212) proposing that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 7, 1978 (43 FR 51845), FDA published a notice that it had filed a petition (GRASP 8G0212) from Krey Packing Co., 3607 North Florissant St., St. Louis, MO 63107, and Shared Technology, Inc., 721 Olive St., Suite 1111, St. Louis, MO 63101, jointly proposing that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is GRAS. In the Federal Register of October 3, 1980 (45 FR 65675), FDA also published a notice that these two companies had no further interest in pursuing the petition and a new company, General Bioscience, Inc., 214 North Sarah St., St. Louis, MO 63108, had assumed responsibility for the petition.

The agency informed General Bioscience, Inc., on March 3, 1981, that the firm needed to submit specific additional information in order for the agency to continue its review of the petition. However, the company has not responded to FDA's request for the additional information needed to determine that the petitioned use of chlorine dioxide is safe.

Because the petitioner has failed to provide the information requested, FDA finds that it is unable to affirm this use of chlorine dioxide as GRAS and thus is denying the petition. However, this denial is without prejudice to the future filing of a petition that is supported by adequate information under either the GRAS (21 CFR 170.35) or food additive (21 CFR 171.1) procedure.

Dated: May 24, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12460 Filed 6-2-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-965-4213-15; F-14932-A]

Alaska Native Claims Selection; Shaktoolik Native Corp

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec.

14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Shaktoolik Native Corporation for approximately .23 acre. The lands involved are in the vicinity of Shaktoolik, Alaska, within Sec. 9, T. 13 S., R. 13 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the NOME NUGET. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 5, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary K. Seitz,

Chief, Branch of Northwest Adjudication.

[FR Doc. 88–12584 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–JA–M

[NM–010–08–4121–02]

Albuquerque District, New Mexico; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Albuquerque District Advisory Council Meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Advisory Council will meet on Monday, June 20, 1988 at 8:30 a.m. at the Sagebrush Inn in Taos, New Mexico.

The Council will receive reports on the results of public meetings on the El Malpais National Conservation Area management plan currently being developed, and on the status of the New Mexico Wilderness effort. A representative from the Environmental Protection Agency will present information about EPA's responsibilities on public lands, and the Council will consider a resolution addressing hazardous materials problems on public lands.

The formal meeting will adjourn at approximately 11:30 a.m. to be followed by a tour of various issues in the BLM's Taos Resource Area.

The public is invited to attend the meeting and time will be provided for public comment. The Albuquerque District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting. For additional information, contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 766–4504.

Michael F. Reitz,

Associate District Manager.

[FR Doc. 88–12581 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–040–07–4322–02]

Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Safford District Grazing Advisory Board will be held.

DATE: Friday, July 1, 1988, 9:00 a.m.

ADDRESS: Cluff Ranch Wildlife Area, Pima, Arizona.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Time Control Grazing, Management Updates, and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, June 30, 1988.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Date: May 27, 1988.

Ray A. Brady,

District Manager.

[FR Doc. 88–12589 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–08–4111–15; W–109367]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

May 27, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–109367 for lands in Campbell County, Wyoming, was timely filed and was accompained by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and not less than 16$^{2}/_{3}$% percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–109367 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis

Chief, Leasing Section.

[FR Doc. 88–12583 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–08–4212–13; MTM 59144]

Order Providing for Opening to the Mining Law of Certain Public Land in Missoula and Granite Counties, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* (FLPMA), to the operation of the mining laws. The lands have been open to the operation of the public land laws since July 8, 1987.

DATE: 9 a.m., July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Edward Croteau, Chief, Lands Adjudication Section, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION: At 9 a.m. on July 18, 1988, the following described lands will be open to location and entry under the United States mining laws:

Principal Meridian, Montana

T. 12 N., R. 15 W.,
Sec. 1, E½SW¼, W½SE¼;
Sec. 12, NW¼NE¼, NW¼, NE¼SW¼, W½SW¼;
Sec. 13, W½NW¼.

Aggregating 560 acres, more or less.

Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

May 27, 1988.

[FR Doc. 88-12586 Filed 6-2-88; 8:45am]

BILLING CODE 4310-DN-M

[AZ-940-08-4212-13; A-22792]

Exchange of Public and Private Lands in Cochise, Maricopa, and Santa Cruz Counties, Arizona

May 25, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange of Land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Talley Realty Development, Inc., a Delaware Corporation. The United States transferred 569.33 acres in Maricopa County to Talley Realty Development, Inc., and in exchange accepted 3,365 acres in Cochise and Santa Cruz Counties.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Arizona State Office, Post Office Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: On December 1, 1987, the Bureau of Land Management transferred the following described land by Patent No. 02-88-0011, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 E.,
Sec. 27, S½SW¼, NW¼SW¼, S½NE¼SW¼, NW¼NE¼SW¼;
Sec. 33, N½NE¼;
Sec. 34, NW¼, N½SW¼, SW¼SW¼, W½SE¼SW¼.
T. 4 N., R. 1 E.,
Sec. 3, lot 4.

Containing 569.33 acres in Maricopa County.

In exchange, 3,365 acres were conveyed to the United States to be administered by the Bureau of Land Management. A complete description of these lands is available for public examination at the Arizona State Office.

The purpose of this notice is to inform the public and interested State and local government officials of this exchange of public and private land.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-12585 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-08-4212-13; CA 22535]

Exchange of Public and Private Lands in El Dorado County, California

AGENCY: Bureau of Land Management (BLM), Interior.

REALTY ACTION: Exchange of public and private lands in El Dorado County, California.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Selected Public Land

El Dorado County, California

T. 9 N., R. 11 E., MDM,
Sec. 14: NW¼SW¼.

Aggregating 40 acres, more or less.

In exchange for the above parcel, the United States will acquire the following described private land from Alan and Cindi Ehrgott:

Offered Private Land

El Dorado County, California

T. 11 N., R. 9 E., MDM,
Sec. 10: those portions of the S½NE¼ and the SE¼NW¼ lying south of the centerline of the South Fork of the American River.

Aggregating 10 acres, more or less.

The purpose of this exchange is to improve the Bureau's management capabilities along a very popular section of the South Fork of the American River. The United States will be acquiring a 10 acre parcel situated right on the river; the parcel also joins a 320 acre tract of public land. The Federal land to be exchanged is of limited value to the public in that it is land-locked and completely inaccessible to the public. This action is consistent with the Bureau's land use plans and regulations and is considered to be in the public interest.

The values of the properties to be exchanged are approximately equal. The action involves both the surface and mineral estates.

The Federal land to be transferred will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (U.S.C. 945).

(2) Archeological clearance on the Federal land shall be granted prior to conveyance of title.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from settlement, location and entry under the public land laws and the mining laws for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION CONTACT: Mike Kelley, Folsom Resource Area Office, (916) 985-4474, at the address listed below. Also available for review is the environmental assessment/land report.

DATE: For a period of 45 days from the first date of publication of this notice in the **Federal Register**, interest parties may submit comments to the Area Manager, Folsom Resource Area.

ADDRESS: Comments should be sent to the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985-4474. Any adverse comments will be forwarded to and evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

Dated: May 26, 1988.

David N. Harris,

Acting Area Manager.

[FR Doc. 88-12587 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-40-M

[OR-943-08-4520-12; GP8-146]

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 10 S., R. 12 E.,
T. 4 S., R. 4 E.

The above listed plats were accepted April 29, 1988 and officially filed May 10, 1988.

The above listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, OR 97208.

Dated: May 24, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-12582 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-33-M

[CO-940-08-54220-11; C-28282]

Proposed Continuation of Withdrawal; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, propose that the order which withdrew lands for an indefinite period of time for two administrative sites be modified and the withdrawal be continued for 20 years insofar as it affects 15 acres of National Forest System land. The land will continue to be closed to the mining laws, but not to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Secretarial Order dated November 6, 1907, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

New Mexico Principal Meridian

Uncompahgre National Forest

T. 49 N., R. 13 W.,
Sec. 20, W½NE¼NW¼SW¼ and NW¼NW¼SW¼.

The area described aggregates 15 acres in Montrose County.

The purpose of this withdrawal is for the administration and protection of the Mesa Administrative Site. No change is proposed in the purpose of this withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-12588 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-08-4212-11; N-30596]

Classification Termination; Nevada

May 24, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes N-30596 was classified effective July 24, 1981. This notice terminates a portion of that Recreation and Public Purposes classification.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-784-5481.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6(a), the Bureau of Land Management hereby terminates Recreation and Public Purposes classification N-30596 as it pertains to the following described lands:

Mount Diablo Meridian, Nevada

T. 12 N., R. 21 E.,
Sec. 18, NE¼NW¼.

The area described contains 40 acres in Douglas County.

The land has been designated as a material community pit under the authority of 43 CFR Part 3604.

At 10:00 a.m. on July 5, 1988, the land will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, pending lawsuits, and requirements of applicable law. All valid applications received prior to or at 10:00 a.m., on July 5, 1988, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m. on July 5, 1988, the land will also be open to the operation of the mining laws. The community pit creates a superior right to remove material as against any subsequent mining claim or entry on the land (43 CFR 3604.1(b)). Mining claims may be located, but claimant's rights do not attach until the community pit is terminated. Location of claims under the general mining laws on lands prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts. The land remains open to the mineral leasing and material sale laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 88-12452 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-08-4111-15; W-107262]

Proposed Reinstatment of Terminated; Oil and Gas Lease

May 25, 1988.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-107262 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and

royalties at rates of $5.00 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-107262 effective January 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88-12457 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-22-M

[CO-050-08-4212-13; C-46391]

Realty Action; Canon City District, Royal Gorge Resource Area, Fremont County, CO

AGENCY: Bureau of Land Management, Interior, Canon City District, Royal Gorge Resource Area.

ACTION: Notice of realty action, Exchange of public and private land in Fremont County, Colorado, C-46391; and segregation from all forms of appropriation under the public land laws.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 18, S., R. 71 W.,
Sec. 19: W½SE¼NW¼, W½NE¼SW¼, N½NE¼SE¼;
Sec. 20: NW¼SW¼, E½SW¼SW¼.
Totaling 120 acres in Fremont County.

In exchange, the United States proposes to acquire from the John Adamic Estate the following private land:

Sixth Principal Meridian

T. 19 S., R. 72 W.,
Tract 41.
Totaling 160 acres in Fremont County.

DATE: Comments must be received on or before July 18, 1988.

ADDRESSES: Submit comments to: District Manager, Bureau of Land Management, Canon City District Office, 3170 East Main, P.O. Box 311, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, CO 81212, Phone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to dispose of public land identified for disposal in the Royal Gorge Management Framework Plan and in return acquire private land that lies within a large block of public land, part of which is the Lower Grape Creek Wilderness Study Area. The fair market values are approximately equal; acreage adjustments or cash equalization payments may be needed following formal appraisal.

Conveyance of the above public lands including mineral estate will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945, Act of August 30, 1980.

2. All valid existing rights of record.

The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for two years from publication of this notice.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 88-12455 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-08-4212-13; C-44720]

Realty Action; Canon City District, Royal Gorge Resource Area; Teller and Fremont Counties, CO

AGENCY: Bureau of Land Management, Interior, Canon City District, Royal Gorge Resource Area.

ACTION: Notice of realty action, exchange of public and private land in Teller and Fremont Counties, Colorado, C-44720; and segregation from all forms of appropriation under the public land laws.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 16 S., R. 68 W.,
Sec. 5: E½SW¼, W½SE¼, NE¼SE¼;
Sec. 6: NE¼SE¼;
Sec. 8: E½NW¼.
Totaling 320 acres in Teller County.

In exchange, the United States proposes to acquire from David and Jane Hall the following private land:

Sixth Principal Meridian

T. 16 S., R. 68 W.,
Sec. 7: Lots 2-4, SE¼NW¼, NE¼SW¼;
Sec. 20: E½NE¼, NE¼SE¼;
Sec. 21: NW¼SW¼.
Totaling 332 acres in Fremont and Teller Counties.

DATE: Comments must be received on or before July 18, 1988.

ADDRESSES: Submit comments to: District Manager, Bureau of Land Management, Canon City District Office, 3170 East Main, P.O. Box 311, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, CO 81212 Phone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to dispose of public land identified for disposal in the Royal Gorge Management Framework Plan and in return acquire private land that lies within or adjacent to a large block of public land, part of which is the Beaver Creek Wilderness Study Area. The fair market values are approximately equal; acreage adjustments or cash equalization payments may be needed following formal appraisal.

Conveyance of the above public lands including mineral estate will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945, Act of August 30, 1890.

2. All valid existing rights of record.

The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for two years from date of publication.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 88-12456 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-JB-M

[NV-030-08-4410-08]

Decision on Management Planning; Lahontan Resource Area; Carson City District, NV

May 27, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision on management planning for the Bravo–20 Bombing Range in the Lahontan Resource Area, Carson City District, Nevada.

SUMMARY: In accordance with the provisions of Pub L. 99–606, the Nevada State Director, BLM, has determined that no Management Plan is necessary for the Department of the Navy's Bravo–20 Bombing Range withdrawal. The Range is used for live ordance practice and is closed to the public.

SUPPLEMENTARY INFORMATION: The Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) provided for the withdrawal of lands for military purposes in four states, including 21,577 acres in Churchill County, Nevada, for the Fallon Naval Air Station's "Bravo–20" Bombing Range. The Bravo–20 area is located in an alkali flat in the northeast portion of the Carson Sink (See **Federal Register** Notice, Vol. 52, No. 21, P. 3176, February 2, 1987, for the legal description of the affected lands and **Federal Register** notice, Vol. 52, No. 40, p. 6227, March 2, 1987, for a correction of the legal description).

The Act also directed the Secretary of the Interior to develop plans for the management of the withdrawal areas for grazing, wildlife habitat, predator control, recreation and fire control.

Since Bravo–20 is used for a live ordnance practice and jettison area and contains a vast amount of unexploded ordnance, it is closed to public access by the Department of the Navy and is not available for the above management uses. Therefore, it has been determined that no plan for the management of surface resources is necessary. This determination is in accordance with Pub. L. 99–606, section 3(c)(2).

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, James M. Phillips, Area Manager, Lahontan Resource Area, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701 (phone: 702–882–1631).

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88–12483 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–HC–M

[AA–063484]

Disclaimer of Interest To Issue; Alaska

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of proposed issuance of recordable disclaimer of interest by the Bureau of Land Management for certain lands within the Kodiak Townsite.

DATE: Comments should be received by September 1, 1988.

ADDRESS: Comments should be sent to: Deputy State Director for Conveyance Management, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Jeanne L. Kosonen, Alaska State Office, (967) 271–3231.

SUMMARY: Pursuant to section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 and *Gamble v. Sault Ste. Marie*, 10 L.D. 375 (March 31, 1890), the Bureau of Land Management will issue a recordable disclaimer of interest for certain cemetery lands in Kodiak townsite affecting the following described lands:

Block 9, Lot 12, USS 2538–B
(Also surveyed as: Block 13, Lot 27 by the City of Kodiak)
Containing approximately 1.42 acres.

1. The Bureau of Land Management has reviewed the official records and has determined that the United States has no claim to or interest in the above described lands and that the issuance of a recordable disclaimer of interest will help to remove a cloud on the title to the land.

2. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed disclaimer may present their views in writing to the Deputy State Director for Conveyance Management, in the Alaska State Office.

3. Accordingly, the recordable disclaimer of interest will be issued no sooner than ninety days after the date of this publication.

Terry R. Hasset,

Chief, Branch of KCS Adjudication.

[FR Doc. 88–12658 Filed 6–2–88; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

[DES 88–29]

Availability of Draft Supplemental Environmental Impact Statement; Kenai National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a Draft Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Kenai National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared for public review a Draft Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Kenai National Wildlife Refuge, Alaska, pursuant to section 3(d) of the Wilderness Act of 1964, section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act), and section 102(2)(C) of the National Environmental Policy Act of 1969. The Draft Supplemental Environmental Impact Statement analyzes the impacts of five alternative wilderness proposals for the Kenai National Wildlife Refuge.

DATES: Comments on the draft document must be submitted on or before July 22, 1988, to receive consideration in the preparation of the Final Supplemental Environmental Impact Statement. A public hearing to meet the requirements of the Wilderness Act of 1964 will be held in Anchorage, Alaska, in the First Floor Conference Room of the U.S. Fish and Wildlife Service Regional Office, 1011 E. Tudor Road beginning at 7:00 p.m. on Wednesday, July 6, 1988.

ADDRESS: Comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199; telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the supplemental environmental impact statement may be obtained by contacting Mr. Knauer.

Copies of the Draft Supplemental Environmental Impact Statement are also available for review at the Office of the Regional Director, address as listed previously, as well as at the Office of the Kenai National Wildlife Refuge, Soldotna, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, Main Interior Bldg., 18th and C Streets, NW., Washington, DC 20240;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue, SW., Albuquerque, NM 87103;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;
U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, SW., Atlanta, GA 30303;
U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and
U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

The Draft Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/ Environmental Impact Statement/ Wilderness Review for the Kenai National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, to fulfill the requirements of section 1317(a) of the Alaska Lands Act. This section requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all lands in refuges in Alaska not Congressionally designated as wilderness as to their suitability or nonsuitability for preservation as wilderness and report Department recommendations to the President.

Although large tracts of land in the refuge were found to meet the criteria of the Wilderness Act for designation as wilderness, not all of these lands were proposed for wilderness designation because of management strategies that will be used to meet refuge purposes. As a result, a range of wilderness alternatives were evaluated subsequent to the Service's selection of its proposed management alternative. Five wilderness proposals, ranging from recommending all suitable refuge lands for wilderness designation to recommending no additional lands for wilderness designation, were examined in the Kenai Refuge Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review. The proposed alternative in the plan recommended that an additional 195,500 acres be proposed for designation as wilderness.

The wilderness review in the Kenai Refuge Comprehensive Conservation Plan/Environmental Impact Statement/ Wilderness Review discussed the wilderness suitability of lands on the refuge, but did not clearly outline which of these lands the Fish and Wildlife Service would propose for inclusion in the President's wilderness recommendations to Congress. To ensure full compliance with the Wilderness Act, the Fish and Wildlife Service has prepared this Supplemental Environmental Impact Statement, clearly discussing the proposal for wilderness designation on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the Final Supplemental Environmental Impact Statement.

Dated: May 23, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88-12389 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Mark Producing

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mark Producing has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 7663 and 6443, Block 297 and 300, respectively, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 26, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the 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). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Lousisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 26, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12454 Filed 6-2-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Mobil Exploration and Producing U.S. 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 Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5322, Block 421, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 24, 1988. Comments

must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

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). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 735–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 25, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–12453 Filed 6–2–88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 721–TA–405 (Preliminary)]

Sewn Cloth Headwear From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–405 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of sewn cloth headwear [1] and visors provided for in items 702.08, 702.08, 702.12, 702.14, 702.20, 702.32, 703.05, 703.10, 703.16 and part 6F of Schedule 3 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 11, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 26, 1988

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–252–1190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

[1] For purposes of this investigation, sewn cloth headwear refers to hats, caps, visors, and other headwear, whether or not ornamented, each comprising cut-and-sewn woven or knit fabric of vegetable fibers (including cotton, flax, and ramie), of man-made fibers, or of blends thereof, provided for in the cited provisions of the tariff schedules.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 26, 1988, by counsel on behalf of the Headwear Institute of America, New York, New York.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commissions rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 16, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–252–1190) not later than June 13, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before June 20, 1988, a written statement of information pertinent to the subject of the

investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 31, 1988.

[FR Doc. 88-12444 Filed 6-2-88; 8:45 am]

BILLING CODE 7020-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations; Motor Carriers

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.

1. Parent corporation and address of principal office:

Occidental Petroleum Corporation, 10889 Wilshire Boulevard, Los Angeles, California 90024 (Incorporated in the State of Delaware)

2. Wholly-owned subsidiaries which will participate in the operations:

i. OXY USA Inc., 110 West Seventh Street, P.O. Box 300, Tulsa, Oklahoma 74119 (Incorporated in the State of Delaware)

ii. MidCon Corp., 701 East 22nd Street, P.O. Box 1207, Lombard, Illinois 60148 (Incorporated in the State of Delaware)

iii. Exeter Drilling Company, Corporation Trust Company of Navada, One East First Street, Reno, Nevada 89501 (Incorporated in the State of Nevada)

iv. Occidental Chemical Corporation, Occidental Tower, 5005 LBJ Freeway, Dallas, Texas 75244 (Incorporated in the State of New York)

v. Occidental International Exploration and Production Company, 10889 Wilshire Boulevard, Los Angeles, California 90024 (Incorporated in the State of California)

vi. Island Creek Corporation, 2355 Harrodsburg Road, Lexington, Kentucky 40504 (Incorporated in the State of California)

B.

1. Parent corporation and address of principal office:

Spancrete Industries, Inc., 10919 W. Bluemound Road, Wauwatosa, Wisconsin 53226

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Spancrete, Inc.—Wisconsin
(ii) Spancrete of Illinois, Inc.,—Illinois
(iii) Waukesha Block Company, Inc.—Wisconsin
(iv) WBC Corporation—Wisconsin
(v) Spancrete Machinery Corporation—Wisconsin
(vi) American Concrete Pipe Company, Inc.—Wisconsin

Noreta R. McGee,

Secretary.

[FR Doc. 88-12360 Filed 6-2-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-No. 57)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment, Johnson, Wyandotte and Leavenworth Counties, KS; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka and Santa Fe Railway Company to abandon its 23.85-mile rail line between Wilder Junction, KS (milepost 0.0) and Leavenworth, KS (milepost 23.85) in Johnson, Wyandotte and Leavenworth Counties, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-12520 Filed 6-2-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Absolute Fire Protection Co., et al.*, Civil No. 88-2087, was lodged with the United States District Court for the District of New Jersey on May 16, 1988.

The proposed consent decree, filed simultaneously with a complaint against approximately 225 parties, concerns the recovery of government response costs incurred in relation to the Kin-Buc hazardous waste landfill in Edison, New Jersey pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*

The proposed decree requires the defendants to pay the amount of $4,980,398.00 to the United States in settlement of the United States claims for past costs incurred under CERCLA.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. 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. *Absolute Fire Protection Co., et al.*, D.J. Ref. No. 90-5-1-1-883.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102; at the Region II office of the

Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.50 ($.10 per page) payable to the Treasurer of the United States for copying.

Roger J. Marzulla

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12450 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Cercla; Alloy Corp. et al.

In accordance with Department policy notice is hereby given that on May 23, 1988, a proposed consent decree in *United States v. Alloy Corporation et al.*, Civil Action No. 88-C-550, was lodged with the United States District Court for the Western District of Wisconsin. The proposed consent decree resolves a judicial enforcement action brought by the United States against ten defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERECLA").

The proposed consent decree requires the ten defendants to reimburse to the United States $543,641.50. This amount respresents the total cost incurred by the United States in response to the release or threat of release of hazardous substances into the environment from the Rodgers Laboratories Inc. facility located in Milwaukee, Wisconsin.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Alloy Products, et al.*, D.J. Ref. 90-11-3-237.

The proposed consent decree may be examined at the office of the United States Attorney, 320 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202 and at the Office of Regional Counsel, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12577 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Dean Sack and Frank Eret

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 24, 1988, a proposed consent decree in *United States of America v. Dean Sack and Frank Eret*, Civ. No. 87-L-252, was lodged with the United States District Court for the District of Nebraska.

The proposed consent decree resolves a judicial enforcement action brought by the United States against Dean Sack ("Sack") and Frank Eret ("Eret") for violations of the Clean Air Act. The complaint filed by the United States alleged that defendants violated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos during demolition and renovation activities that took place at Defendant Sack's Odd Fellows Home in York, Nebraska.

The proposed consent decree enjoins defendants from violating the asbestos NESHAP in the future. The proposed consent decree also requires defendants to pay a civil penalty of $15,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. 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 of America v. Dean Sack and Frank Eret*, D.O.J. Ref. 90-5-2-1-976.

The proposed consent decree may be examined at the office of the United States Attorney, District of Nebraska, 520 Federal Building, 100 Centennial Mall North, Lincoln, Nebraska, 68508, and at the Region VII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Henry F. Rompage, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice.

Thomas E. Hookano,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12580 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

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"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and Nippon Hoso Kyokai ("NHK") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NHK is a Japanese corporation with its principal place of business at 1-10-11, Kinuta, Setagaya-Ku, Tokyo 157, Japan.

Bellcore and NHK entered into an agreement effective April 1, 1988 to collaborate in research in the area of High Definition TV (HDTV), such research to include signal processing for the transmission of HDTV signals over broadband networks and the demonstration of feasibility of research concepts by experimental prototypes and experimental systems thereof. Such research will have application to

exchange and exchange access telecommunications.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-12578 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

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"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and David Sarnoff Research Center ("Sarnoff") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Sarnoff is a Delaware corporation with its principal place of business at CN 5300, Princeton, New Jersey 08543-5300.

Bellcore and Sarnoff entered into an agreement effective March 1, 1988 to collaborate in research with respect to securing a scientific understanding of the physical and chemical principles underlying the structure and the electrical and other properties of high temperature superconducting materials and to better understand their application in microwave and high speed systems for exchange and exchange access services and for uses of interest to the defense of the United States of America.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-12579 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

George C. Daniel, M.D.; Revocation of Registration

On April 6, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to George C. Daniel, M.D., of 11610 Milbern Drive, Potomac, Maryland 20854 proposing to revoke his DEA Certificate of Registration AD2730706 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Daniel's continued registration with DEA would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

On February 24, 1988, Dr. Daniel was declared to be a fugitive from justice. Since Dr. Daniel could not be located, notice of DEA's proposed action was given by publishing the Order to Show Cause in the **Federal Register**. See 53 FR 12087 (April 12, 1988). In addition, a copy of the published Order to Show Cause was sent to Dr. Daniel's last known address by registered mail, but was ultimately returned to DEA unclaimed. More than thirty days have passed since the Order to Show Cause was published in the **Federal Register** and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), George C. Daniel, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that the Drug Enforcement Administration initiated an investigation of Dr. Daniel's prescribing practices after receiving information that Dr. Daniel was issuing prescriptions for Schedule II controlled substances for no legitimate medical purpose. On September 15, 1987, a DEA Special Agent, acting in an undercover capacity, was introduced to Dr. Daniel by a confidential informant. This meeting occurred inside Dr. Daniel's car which was parked at a local subway station. On this occasion, the undercover agent purchased a prescription for 30 Percodan tablets, a Schedule II controlled substance, from Dr. Daniel for $75.00. At no time during this visit was any medical history taken nor were any medical problems discussed.

On September 25, 1987, the undercover agent again met Dr. Daniel inside his car which was parked at the same subway station. On this occasion, Dr. Daniel issued the undercover agent a prescription for 30 Percodan tablets. In addition, Dr. Daniel wrote a prescription for 30 Dilaudid tablets, also a Schedule II controlled substance, in the name of an individual who was not only not present during this meeting, but was also unknown to Dr. Daniel. The udnercover agent gave Dr. Daniel $100.00 for each of these prescriptions. Neither of these prescriptions were issued for a legitimate medical purpose.

On October 8, 1987, the undercover agent went to Dr. Daniel's residence/office. The undercover agent was accompanied by another DEA Special Agent, also acting in an undercover capacity. During the course of this visit, Dr. Daniel wrote the undercover agents four prescriptions for Schedule II controlled substances in exchange for $400.00. Two of these prescriptions were written for individuals who were not present during this visit. None of these prescriptions were issued for a legitimate medical purpose.

Finally, on October 30, 1987, a third DEA Special Agent, acting in an undercover capacity, went to Dr. Daniel's residence/office. During the course of this visit, Dr. Daniel wrote the undercover agent four prescriptions for Schedule II controlled substances for $400.00. Three of these prescriptions were written for individuals who were not present during this visit. None of these prescriptions were written for a legitimate medical purpose.

On November 6, 1987, Dr. Daniel was indicted in the United States District Court for the District of Maryland and charged with eleven counts of knowingly and intentionally attempting to unlawfully dispense or distribute a Schedule II controlled substance in violation of 21 U.S.C. 841(a)(1) and 846. Dr. Daniel as arrested on November 10, 1987, and was held without bond until January 1988 when he was released on $200,000.00 bond.

On Feburary 22, 1988, Dr. Daniel was scheduled to appear for trial in the United States District Court for the District of Maryland, however, he failed to appear. DEA declared Dr. Daniel a fugitive from justice on Feburary 24, 1988. Attempts to locate Dr. Daniel have been unsuccessful.

The Administrator concludes, based upon the conduct described above, that the continued registration of Dr. Daniel would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that Dr. Daniel's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AD2730706, previously issued to George C. Daniel,

M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective immediately.

Dated: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-12509 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-7]

Murray Pharmacy, Denial of Application

On December 15, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Murray Pharmacy, Ogden, Utah (Respondent), proposing to deny the pharmacy's application for registration executed on February 23, 1987. The statutory basis for the denial is that the registration of the pharmacy would be inconsistent with the public interest based upon the conviction of LaMoine F. Murray, owner of Murray Pharmacy, in the United States District Court for the District of Utah on January 13, 1983, for omitting material information from required documents, a felony relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause in a letter dated January 14, 1988. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On January 21, 1988, Judge Bittner issued an order directing the agency to file a prehearing statement on or before February 10, 1988, and Respondent to file a prehearing statement on or before March 2, 1988. In the Order for Prehearing Statements, Judge Bittner stated that, "Respondent is cautioned that failure to timely file a prehearing statement as directed above may be considered a waiver of hearing and an implied revocation of a request for hearing." Agency counsel timely filed its prehearing statement, however, Respondent never submitted such a filing. Judge Bittner terminated the proceedings by order dated March 29, 1988. The Administrator finds that Respondent pharmacy has waived its right to a hearing by failing to file its prehearing statement, and now enters his final order in this matter without a hearing and based on the record before him. 21 CFR 1301.57.

The Administrator finds that LaMoine F. Murray, R.Ph. is the owner of Respondent pharmacy. Mr. Murray was convicted on January 13, 1983, in the United States District Court for the District of Utah of two counts of omitting material information from required documents in violation of 21 U.S.C. 843(a)(4)(A), felonies relating to controlled substances. This conviction arose from an investigation which revealed that from September 1981 through May 1982, Mr. Murray provided controlled substances to a young woman in exchange for sexual favors. An audit of Respondent pharmacy disclosed a shortage of Percodan tablets. Respondent's controlleld substance records were not complete and accurate. He did not have prescriptions for the controlled substances that he provided to the young woman.

The DEA Certificate of Registration for Respondent pharmacy was revoked effective August 22, 1984. 49 FR 29686 (1984). On March 26, 1985, the Utah Division of Registration, Board of Pharmacy, revoked Respondent's license as a dispensary of controlled substances. Respondent was without authority to handle controlled substances in the State of Utah. On January 7, 1986, Respondent pharmacy submitted an application for registration to DEA. This application was denied, without a hearing, based on Respondent's lack of state authority to handle controlled substances. 52 FR 7672 (March 12, 1987).

Effective February 9, 1987, Respondent pharmacy's license as a dispensary of controlled substances was reinstated by the Director of the Division of Occupational and Professional Licensing of the State of Utah. The license is in probationary status for three years.

The Administrator finds that although Respondent pharmacy is now currently authorized to handle controlled substances in the State of Utah, neither Respondent nor Mr. Murray, its owner, have provided any mitigating evidence which would contrast with the nature of Mr. Murray's past conduct and his felony conviction relating to controlled substances. Without such evidence, the Administrator is compelled to conclude that registration of the pharmacy would be inconsistent with the public interest.

DEA has consistently held that the registration of a pharmacy may be revoked, suspended or denied as a result of the controlled substance handling practices of the pharmacy's owner, majority shareholders, officers, managing pharmacist or other key employee. See, *White's Best Buy Drugs*, Docket No. 87-41, 53 FR 7251 (1988); *Unarex of Plymouth Road, d.b.a. Motor City Prescription Center* and *Unarex of Dearborn, d.b.a. Motor City Prescription Center*, Docket Nos. 84-1 and 84-2, 50 FR 6077 (1985); *Bourne Pharmacy, Inc.*, Docket No. 83-32, 49 FR 32816 (1984); and cases cited therein. Respondent's owner, Mr. Murray, and convicted of a controllled substance-related felony. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that the application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration submitted by Murray's Pharmacy on February 23, 1987, be, and it hereby is, denied. Any other outstanding applications for registration submitted by Respondent are denied. This order is effective June 3, 1988.

Dated: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 12508 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-53]

James B. Rivers, D.M.D.; Revocation of Registration

On May 6, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to James B. Rivers, D.M.D. (Respondent) of 9355 Park West Boulevard, Knoxville, Tennessee 37923 proposing to revoke his DEA Certificate of Registration BR0321896 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration with the Drug Enforcement Administration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Nashville, Tennessee on November 3, 1987. On February 16, 1988, the Administrative Law Judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, Respondent filed exceptions to Judge Bittner's opinion and recommended ruling. On March 21, 1988, Judge Bittner

transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a practicing oral and maxillofacial surgeon. On May 31, 1983, the Health Related Boards Division of the Tennessee Department of Health and Environment (Health Related Boards) received information from the Tennessee State Board of Pharmacy that area pharmacists had reported that individuals of questionable character were presenting prescriptions written by Respondent for Schedule II controlled substances including Demerol, Percodan and Dilaudid. As a result of this information, on January 6, 1984, an investigator with the Health Related Boards questioned Respondent regarding these prescriptions. Respondent told the investigator that approximately two years earlier, he had begun treating an individual who, in his opinion, had legitimate medical problems, but who was also addicted to some type of narcotic. At the conclusion of the interview, the investigator advised Respondent that he may have violated Federal regulations by maintaining an individual's drug addiction. Respondent then stated that he would no longer treat the individual and did not anticipate prescribing any medication for him in the future.

In July and August 1984, the investigator received information from area pharmacists and from the Tennessee State Board of Pharmacy which indicated that Respondent continued to prescribe controlled substances to the individual. Respondent testified at the hearing in this matter that he prescribed controlled substances for the individual because the individual was harassing and intimidating Respondent and his family.

On April 21, 1985, Respondent retained an attorney to help him terminate the contact between himself and the individual. Respondent testified that the initial attempts by Respondent and his attorney to get the individual to leave Respondent alone were unsuccessful.

On October 4, 1985, the investigator with the Health Related Boards, who was then employed by DEA as an investigator, interviewed Respondent after determining that the DEA number which Respondent was using had been retired for approximately ten years. At this meeting, Respondent was advised of the procedures for applying for a new DEA Certificate of Registration. In addition, Respondent was told that he was not authorized to prescribe, dispense, administer or otherwise handle controlled substances and that should he do so, he would be intentionally violating Federal law. The investigator further advised Respondent that once he obtained a new Certificate of Registration, he could not prescribe controlled substances to a drug addict to maintain his addiction. Respondent admitted during the course of the interview that he knew that the individual was a drug addict and that he was maintaining the individual's addiction. Respondent noted that his attorney had been aware of the situation between Respondent and the individual for at least the previous six months.

After the investigator's visit on October 4, 1985, Respondent's attorney prepared a letter dated October 8, 1985, which Respondent gave to the individual. Among other things, the letter stated that,"Dr. Rivers' DEA number is no longer valid as of October 4, 1985, and he will not write any further prescriptions." On October 21, 1985, the investigator learned that a local pharmacy received a prescription written by Respondent for another individual for Tylenol #4, a Schedule III narcotic controlled substance.

On November 25, 1985, Respondent telephoned the investigator to ask whether he should list his retired DEA number when applying for the renewal of his state dental license. The investigator once again advised Respondent that he did not have a valid DEA registration. During this conversation, Respondent told the investigator that he was not prescribing controlled substances.

On April 30, 1986, Respondent's attorney filed a complaint and obtained an injunction against the individual. Respondent testified at the hearing that he had not seen the individual since the injunction was issued. Respondent introduced evidence at the hearing that in 1986 he advised a county prosecutor and the head of the Knoxville-Knox County Metro Drug Unit of his difficulties with the individual.

In December 1986, and January 1987, another DEA investigator conducted a survey of 14 of the 136 pharmacies in the Knoxville area. The investigation revealed that Respondent had written at least 11 prescriptions for controlled substances subsequent to October 4, 1985, when he was told he was not registered with DEA, but before March 11, 1986, when his new DEA Certificate of Registration was issued. A compilation of prescriptions found in the pharmacies surveyed revealed that Respondent had written prescriptions for over 17,000 dosage units of controlled substances, primarily Schedule II substances, between January 30, 1981 and March 21, 1986, all for the previously mentioned individual. These prescriptions were written not only in the individual's name, but also in names which Respondent admitted that he knew were fictitious.

The Administrative Law Judge concluded that Respondent's continued registration with DEA is inconsistent with the public interest. Respondent maintained the individual's drug addiction for at least five years. He often issued the individual prescriptions for controlled substances using fictitious names. Respondent continued to write prescriptions for controlled substances even after he was told that he was not authorized to do so.

Respondent testified that after his October 4, 1985 meeting with the investigator, he thought that his registration was in "limbo", and that he could continue to use his DEA number to issue prescriptions. The Administrative Law Judge stated in her opinion that she put no credence in this testimony. Judge Bittner noted that Respondent was not a particularly credible witness since he appeared to tailor much of his testimony to support his defenses rather than to present an accurate portrait of events. Second, the DEA investigator was a credible witness who testified that he specifically told Respondent on October 4, 1985, that he was not registered with DEA and therefore could not lawfully prescribe controlled substances. Third, any claim that Respondent did not understand the investigator's October 4, 1985 warning is contradicted by the statement in the letter written by Respondent's lawyer on October 8, 1985, which specifically stated that Respondent's DEA number was no longer valid and he would not write any further prescriptions for controlled substances. Finally, in November 1985, the investigator again told Respondent that he did not have a valid DEA registration.

Respondent contends that he wrote the prescriptions for controlled substances for the individual because the individual intimidated him. However, Judge Bittner noted in her opinion, that the purported "intimidation" went on for a substantial period of time before Respondent took meaningful steps to atempt to eliminate it.

The Administrative Law Judge concluded that the evidence presented in this matter demonstrates that

Respondent does not appreciate the enormous responsibility which accompanies DEA registration. Registrants under the Controlled Substances Act are required to prevent the diversion of controlled substances into the illicit market. Respondent's conduct reflects a failure to take adequate action to protect the public health and safety. Respondent has failed to provide any satisfactory assurance that a situation such as the one he alleges occurred with the individual is unlikely to recur. Judge Bittner noted that Respondent's failure to stop prescribing controlled substances as soon as he was advised that he had no authority to so prescribe indicates a cavalier attitude toward Federal regulation of controlled substances. Consequently, the Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. Respondent's registration must be revoked. The Administrator, in reaching this conclusion, carefully considered Respondent's exceptions to Judge Bittner's opinion. However, nothing in Respondent's exceptions persuaded the Administrator that Respondent should remain registered with DEA.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration BR03221896, previously issued to James B. Rivers, D.M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective July 5, 1988.

Date: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-12510 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-40]

Carl Suchar, D.O.; Revocation of Registration

On March 31, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Carl Suchar, D.O. (Respondent) of 611 Orvid Road East, Suite 510, Clearwater, Florida 33516 proposing to revoke his DEA Certificate of Registration AS1718723 and to deny any pending applications for registeration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Adminsitrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Tampa, Florida on October 20 and 21, 1987. On February 23, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, Government counsel filed exceptions to Judge Young's opinion and recommended ruling and Respondent filed a repsonse to these exceptions. On March 25, 1988, Judge Young transmitted the record of these proceedings, including the Government's exceptions and Respondent's response thereto, to the Adminstrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on May 19, 1986, a confidential informant advised the Clearwater, Florida Police Department that since December 1985, she had been obtaining prescriptions for controlled substances from the Respondent in exchange for fulfilling his sexual fantasy wherein he wanted to be dominated by a female. The confidential informant stated further that she often met Respondent at his office after office hours. During each visit, Respondent would be chained to a chair wearing a locked chastity belt. On several occasions, Respondent wrote prescriptions for Tussionex, a Schedule III controlled substance, for the confidential informant. The confidential informant advised the Clearwater Police officers that Respondent also allowed her unlimited access to controlled substance samples that he had in his office.

Following the initial interview of the confidential informant, a detective went to area pharmacies to attempt to locate prescriptions written by Respondent for the confidential informant. He located several such prescriptions for Tussionex. Upon further investigation, it was learned that the confidential informant had altered several of these prescriptions to increase the number of dosage units.

On June 4, 1986, after agreeing to cooperate with the Clearwater Police Department, the confidential informant went to Respondent's office after office hours. When she arrived at his office, Respondent was chained to a chair. Respondent would not write the confidential informant a prescrpition for controlled substances since he felt that area pharmacists were getting suspicious of any prescriptions he wrote for her. However, Respondent did allow the confidential informant to take whatever she wanted from his controlled substance samples and further assured her that he would ask the drug company representatives to bring him samples of certain controlled substances which she indicated she wanted.

The confidential informant again went to Respondent's office on June 6, 1986. On this occasion she was accompanied by an undercover police officer who posed as her friend. When they arrived at Respondent's office, Respondent was chained to a chair wearing a locked chastity belt. The undercover officer and the confidential informant had access to Respondent's patient records and to Respondent's controlled substance sample. Both the confidential informant and the undercover officer filled their pockets and purses with controlled substance samples. During this visit, Respondent entered into a written slave contract with the confidential informant whereby he undertook to become her slave and agreed to do anything she requested. Also durng this visit, Respondent wrote a prescription for Tenuate Dospan, a Schedule IV controlled substance, for the undercover officer for no legitimate medical purpose. Respondent wrote the prescription for twice the number of dosage units than he normally would so that the undercover officer and the confidential informant could share the drugs obtained pursuant to the prescription.

On June 16, 1986, a search warrant was executed at Respondent's office and he was arrested and charged with delivery of a controlled substance and failure to maintain required records both in violation of the laws of the State of Florida. At that time, Respondent admitted that he prescribed controlled substances for both the confidential informant and the undercover officer for no legitimate medical purpose. On January 19, 1987, Respondent entered a plea of *nolo contendere* to the criminal charges. Adjudication of guilt was

withheld and Respondent was placed on three years probation and fined.

During the execution of the search warrant, a number of violations of Federal controlled substance laws and regulations were discovered. Respondent did not properly store controlled substances in violation of 21 CFR 1301.75. Respondent was not registered with DEA to handle Schedule III controlled substances, yet he maintained Schedule III controlled substance samples at his office, dispensed them and wrote prescriptions for them. Also, Respondent did not maintain any records of receipt of controlled substances in violation of 21 U.S.C. 827 and 21 CFR 1304.21.

Respondent suffers from a psychosexual disorder which requires long-term intensive treatment. Respondent is presently being treated by a psychiatrist for this disorder. Treatment will be required for at least two more years and could very well be required for ten years. Respondent's psychiatrist testified that in his opinion, Respondent can safely practice medicine and handle controlled substances. The psychiatrist's prognosis for Respondent's recovery is optimistic provided he continues treatment. Testimony also revealed that Respondent participates in the Impaired Professionals Program in the State of Florida.

Based on the evidence presented at the hearing, the Administrative Law Judge believes that there is little chance of Respondent repeating his previous behavior and, therefore, recommended that Respondent be permitted to remain registered with DEA, provided he continues in therapy and there are no further violations of drug control laws or regulations. The Administrative Law Judge specifically recommended that Respondent be permitted to retain his DEA Certificate of Registration, Schedule III included, provided that at six month intervals he provide the approriate DEA field office with a certification from his therapist that Respondent is still undergoing regular therapy and is making signficant progress towards recovery.

The Administrator agrees with the Administrative Law Judge's findings of fact, however disagrees with Judge Young's conclusion and recommended decision. Respondent prescribed and dispensed controlled substances for no legitimate medical purpose; failed to maintain required records relating to controlled substances; and handled Schedule III controlled substances when he was not authorized to do so. Respondent exhibited a total disregard for his duties as a health care professional to prevent the diversion of controlled substances. The egregiousness of his actions indicate a lack of awareness of the tremendous responsibility which accompanies DEA registration. The Administrator notes that Respondent is currently undergoing treatment for his psychosexual disorder. However, he has only been in treatment for one year and Respondent's psychiatrist testified that his treatment will take at the very least another two years. Respondent's progress in therapy to date is not sufficient to assure that he would not continue to be a danger to the public health and safety.

The Administrator concludes that at this time, Respondent's continued registration would be inconsistent with the public interest. After successful completion of treatment, the Adminstrator will give serious consideration to granting Respondent a DEA registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS1718723, previously issued to Carl Suchar, D.O., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective July 5, 1988.

Date: May 27, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-12511 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-09-M

Antitrust Division

Petroleum Environmental Research Forum

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 participants of the Petroleum Environmental Research Forum ("PERF") Project No. 88-01, titled "Premix Surface Combustion (PSC) Burner Demonstration Program", have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to Project 88-01 and (2) the nature and objective of the research program to be performed in accordance with said project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in Project No. 88-01 together with the nature and objective of the research program are given below.

The current parties to Project 88-01 identified by this notice are: Atlantic Richfield Company; Chevron U.S.A. Inc.; and Union Oil Company of California. The objective of this project and its members and the area of planned activity in this project is to demonstrate the NO_x reduction capability of certain premix surface combustion burners and their mechanical and performance characteristics as retrofit burners in actual refinery heater service. Participation in this project will remain open until September 30, 1988, and the parties intend to file additional written notification disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from Chevron Corporation, P.O. Box 7141, San Francisco, California 94120-7141.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-12451 Filed 6-2-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extentions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Concrete, Concrete Forms, and Shoring
Occupational Safety and Health Administration
Recordkeeping
Businesses or Other Profit, Small Businesses or Organizations.
70,000 Responses; 11,667 Hours

Construction firms engaged in erection of concrete formwork are required to have a copy of the formwork plans or drawings available. The plans or drawings are necessary to provide detailed specifications and instructions for erecting the formwork. Failure to follow the plans or drawings may result in a formwork collapse.

Signed at Washington, DC this 31st day of May, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–12573 Filed 6–2–88; 8:45 am]

BILLING CODE 4510–26–M

Employment and Training Administration

[TA–W–20, 370AT]

Health-Tex, Inc., Cranston, RI; Termination of Certification of Eligibility To Apply for Adjustment Assistance

In accordance with section 223(d) of the Trade Act of 1974, the Department of Labor herein presents the results of TA–W–20, 370A–T: investigation regarding termination of certification of eligibility to apply for worker adjustment assistance as prescribed in section 223(d) of the Act.

On March 29, 1988 workers at the Cranston office and warehouse in Cranston, Rhode Island were certified as eligible to apply for trade adjustment assistance. The Notice of Certification was pubished in the **Federal Register** on April 11, 1988 (53 FR 11921).

The investigation regarding termination was initiated on April 27, 1988 to determine whether the workers at the subject location continue to meet the group eligibility requirements of section 222 of the Act. The Notice of Investigation was published in the **Federal Register** on May 9, 1988 (53 FR 16478). No public hearing was requested and none was held.

Whenever, it becomes evident that any of the Group Eligibility Requirements of section 222 of the Trade Act of 1974 are no longer met, the certification as issued must be revised to include a termination date.

Without regard as to whether the other criteria are satisfied, the investigation reveals that the decreased employment criterion of the Group Eligibility Requirements of the Trade Act of 1974 is no longer being met with respect to workers of Health-Tex, Inc., Cranston, Rhode Island.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that the total or partial separation of workers at the Cranston office and warehouse of Health-Tex, Inc., Cranston, Rhode Island are no longer attributable to the conditions specified in section 222 of the trade Act of 1974.

In accordance with section 223(d) of the Act, I hereby revise the certification of March 29, 1988 as follows:

All workers of Health-Tex, Incorporated, in Cranston, Rhode Island who became totally or partially separated from employment on or after December 23, 1986 and before June 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–12572 Filed 6–2–88; 8:45 am]

BILLING CODE 4510–30–M

Apprenticeship 2000 Initiative Research Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor's Employment and Training Administration announces a program of research in support of its Apprenticeship 2000 initiative. The research plan includes both short term issue papers and longer-term projects. The research is a major component in the Department's review of the apprenticeship training concept to determine its most effective role in meeting future needs for a highly skilled work force.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Acting Director, Bureau of Apprenticeship and Training, Employment and Training Administration, Room N–4649, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 535–0540.

SUPPLEMENTARY INFORMATION: The Department of Labor has devoted substantial resources over the last two years to identifying changes in the work place that are likely to occur during the remaining years of this century and into the next. From this effort, the Employment and Training Administration (ETA) is focusing on issues relating to the American work force and its training needs.

The Apprenticeship 2000 initiative is a review of the apprenticeship training concept to determine its proper and most effective role in meeting future skilled training needs. The basic premise is that the apprenticeship concept of structured on-the-job training combined with related classroom instruction merits serious consideration as a major vehicle for preparing workers for skilled jobs.

Two key components of this initiative are (1) a public dialogue and (2) a two phased research program. The first phase consists of short term research papers; the second phase will involve longer-term projects.

The purpose of the first phase of the research program is to carefully analyze a number of key issues and to develop and support recommendations for the

future direction of apprenticeship. These short-term projects will be completed in time for use in preparing the report of findings and recommendations which will conclude the first stage of the initiative. They will be more in the nature of research papers rather than traditional quantitative research.

The second phase of the research program, the longer-term projects, will likely be demonstration projects and may include such features as testing the feasibility of expanding apprenticeship to new industries, testing alternative delivery systems, and testing expansion to targeted groups. The exact nature of the longer-term projects depends upon the findings and recommendations from the first stage of the initiative.

Specific topics for the shorter-term research have been identified. To help focus both the research and the next stages of the apprenticeship review, three broad objectives have been identified. These objectives were developed after reviewing public comments received in response to two earlier **Federal Register** notices. They are intended to be working quidelines rather than outcomes of the apprenticeship review. Each objective with related issue papers follows:

Objective 1: Develop an expanded apprenticeship program which is adaptable to new occupations and expanding industries.

- Examine issues relating to expansion of apprenticeship to other industries.
- Review issues and barriers relating to women in apprenticeship.
- Examine the issue of how many apprentices should be assigned to any one journeyman on a site.
- Examine the reasons why individuals drop out or only partially complete apprenticeship training.
- Review the financial and non-financial incentives that might be used to encouraged expansion of apprenticeship.

Objective 2: Create a program structure which encompasses consistent standards as well as high-quality, flexible, portable, variable length and competency-based apprenticeship programs.

- Review current types of apprenticeship training programs to identify best features which could be adapted to new programs.
- Examine the feasibility of developing variable length apprenticeship programs which include copetency-based features and the acceptability/credibility associated with existing apprenticeship programs.
- Examine the issues around making apprenticeship credentials transferrable across programs and state lines.
- Review the current role of the Bureau of Apprenticeship and Training in accrediting apprenticeship programs and the accrediting methods used by other education and training systems and examine ways in which the apprenticeship accreditation process could be strengthened.
- Determine the feasibility of using the apprenticeship concept in upgrading or retraining workers at various points in their careers.

Objective 3: Develop a delivery and oversight structure to effectively carry out alternatives developed as a result of the apprenticeship initiative.

- Explore the feasibility of using the vocational education system as a school-based feeder mechanism for existing and expanded apprenticeship training.
- Examine the Bureau's role in Equal Employment Opportunity (EEO) enforcement in apprenticeship programs which are already covered under other EEO enforcement activities and determine whether such responsibilities might be changed.
- Examine the current operations of the State Apprenticeship Councils and make recommendations for the changes necessary to promote expansion of the apprenticeship concept.

In addition to these very specific projects, the ETA plans to examine the basic authority for the national apprenticeship system—the legislation and regulations. Options for change will be identified. Any specific recommendations for change to either regulations or legislation will await the outcome of the public dialogue and the short-term research papers.

Work on the short-term research papers will begin in early summer and conclude in the fall of 1988. As indicated, these papers will be used to develop and support recommendations for the future role of apprenticeship in developing a highly skilled work force. Plans are to issue these recommendations in late fall in the form of a comprehensive report of findings and recommendations. Following issuance of the report, a phased-in implementation period combined with the longer term research projects will commence. These projects may last one or 2 years depending upon the project. Findings from the longer-term research could be implemented beginning in late 1990 or early 1991.

Signed at Washington, DC, this 31st day of May, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor for Employment and Training.

[FR Doc. 88–12566 Filed 6–2–88; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Addition to List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the labor surplus area list is effective June 1, 1988.

SUMMARY: The purpose of this notice is to announce an addition to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: TEESS; Telephone: 202–535–0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation (FAR) Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Orders 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation (FAR) Part 25 (48 CFR Part 25) implements Executive Order 12260. Executive agencies should refer to FAR Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Order 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor

surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 27, 1987, (52 FR 41338).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is added to the list of labor surplus areas, effective June 1, 1988.

The following addition to the list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on May 25, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

ADDITION TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[June 1, 1988]

Labor surplus area	Civil jurisdiction included
Wisconsin: Door County	Door County

[FR Doc. 88-12567 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a party of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT88-1 (Jan. 8, 1988)—p. 62
New York:
NY88-11 (Jan. 8, 1988)—pp. 782-784; pp. 786-788
NY88-18 (Jan. 8, 1988)—p. 830
Rhode Island:
RI88-1 (Jan. 8, 1988)—p. 1018

Volume II:

Illinois:
IL88-1 (Jan. 8, 1988)—p. 70
IL88-3 (Jan. 8, 1988)—p. 114
Indiana:
IN88-1 (Jan. 8, 1988)—p. 237
IN88-2 (Jan. 8, 1988)—p. 249
IN88-4 (Jan. 8, 1988)—pp. 278-280
IN88-5 (Jan. 8, 1988)—pp. 291-292
IN88-6 (Jan. 8, 1988)—pp. 300, 304

Volume III:

California:
CA88-1 (Jan. 8, 1988)—p. 34
CA88-4 (Jan. 8, 1988)—pp. 70-102a

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
(202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of May 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-12446 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act fo 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a state plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of state standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at leas as effective status of the state program, a program change supplement to a state plan shall be required.

In response to Federal standards changes, the state has submitted by letter dated May 21, 1981 form Edmund N. Orbeck, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, state standards revocation amendments comparable to 29 CFR Part 1910 Revocation of Selected General and Special Industry Safery and Health Standards, as published in the **Federal Register** (43 FR 49744) and (43 FR 49764) on October 24, 1978.

Regional review revealed discrepancies in the state's responses. On January 5, 1984, the submission was returned to the state for corrective action. On January 4, 1985, a corrective amendment which addressed OSHA's corrective amendments to the Revocation of Selected General and Special Industry Safety and Health Standards as appears in the **Federal Register** (43 FR 51759 and 51760) on November 7, 1978 was received by OSHA Region X. Regional and state review of the corrective amendment revealed discrepancies. On May 17, 1985, the submission was forwarded to the OSHA National Office for review. On August 21, 1985 the National Office directed that additional corrections be made.

On November 4, 1986, the state submitted a second corrective amendment to its revocations.

These state standards which were originally contained in Alaska Administrative Codes AAC 01. General Safety Code; AAC 02. Occupational and Industrial Structures Code; AAC 03. Electrical Code; AAC 04. Occupational Health and Environmental Control Code; AAC 11. Laundry Machinery and Operations Code; and AAC 12. Bakery Code, received OSHA approval during the state's developmental period commencing on April 25, 1973 through Certification on September 14, 1977.

The state's revocations were adopted on July 24, 1980 with an effective date of August 23, 1980 after public notification of the comment period was published in statewide media on June 16, 23, and 30, 1980. The public comment period was open for thirty days by Edmund N. Orbeck, Commisisoner, under authority vested by AS 19.60.020. No requests for a hearing were received. Subsequently, the state's Corrective Amendment was adopted on August 31, 1983 with an effective date of September 30, 1983 after public notification of the comment period was published in statewide media on February 25 and March 4, 1983. The public comment period was open for thirty days by Jim Robinson, Commissioner, under authority vested by AS 19.60.020. No requests for a public hearing were received.

On November 4, 1986, a second corrective amendment, adopted on May 10, 1985 with an effective date of June 9, 1985, was forwarded to Region X for inclusion in the state's submittal for revocations. Public notification for the comment period was published in the statewide media on March 6 and 13, 1985. The public comment period was open for thirty days by Jim Robinson, Commissioner, under authority vested by AS 19.69.020. No requests for a hearing were received.

The state has retained several of the OSHA revoked standards. They are: 1910.25(c)(1)(iii)(d)/AAC 01.1105(c)(1)(C)(iv), Stepladder Side Rail Computations; 1910.25(c)(5)(v)/AAC 01.1105(c)(5)(E), Ladder Locking Device; 1910.25(d)(1)(v)/AAC 01.1105(d)(1)(D) through 1910.25(d)(1)(ix)/AAC 01.1105(d)(1)(H), Care of Wooden Ladders; 1910.68(c)(7)(i)(a)/AAC 01.0203(c)(7)(A)(i), Sign Criteria; 1910.96(b)(5)/AAC 04.0105(b)(5), Calendar Quarters; 1910.106(h)(2)(i)/AAC 01.0306(h)(2)(A), Classification of Processing Vessels; 1910.109(a)(5)/AAC 09.109(a)(34), Definition of Inhabited Building; 1910.109(a)(9)/AAC 09.120(a)(53), Definition of Public Conveyance; 1910.109(a)(11)/AAC 09.120(a)(55), Definition of Railway; 1910.109(a)(20)/AAC 09.109(a)(20), Definition of D.O.T. Specifications; 1910.109(c)(3)(viii)/AAC 09.210(d)(2)(A)(viii), Explosive Magazine Security; 1910.109(d)(1)(ii)/AAC 09.230(a)(4), Transportation of Explosives; 1910.109(d)(2)(ii)/AAC 09.230(b)(2), Transportation of Explosives; 1910.109(e)(4)(i)/AAC 09.310(c)(2), Electric Blasting Caps; 1910.109(g)(2)(i)/AAC 09.410(b)(1), Mixing of Explosives; 1910.109(g)(6)(v)/AAC 09.230(a)(4), Transportation of Explosives; 1910.109(g)(6)(vii)/AAC 09.230(a)(1), Transportation of Explosives; 1910.109(g)(6)(viii)/AAC 09.230(b)(2), Transportation of Explosives; 1910.109(h)(3)(i)(a)/AAC 09.420(c)(1), Mixing of Explosives; 1910.109(h)(3)(i)(b)/AAC 09.420(c)(1), Mixing of Explosives; 1910.109(j)(3)(ii)/AAC 09.225(c)(2), Storage of Explosives; 1910.109(j)(4)(ii)/AAC 09.225(d)(2), Storage of Explosives; 1910.110(c)(5)(iv)(b)/AAC 01.0310(c)(5)(D)(ii), Liquid Petroleum Gas (LPG) Containers; 1019.141(c)(2)(ii)/AAC 02.106(c)(2)(B), Sanitation Facilities; 1910.141(c)(2)(iii)/AAC 02.106(c)(2)(C), Sanitation Facilities; 1910.157(a)(8)/AAC 01.1302(a)(8), Mounting of Fire Extinguishers; 1910.157(c)(1)(iii)/AAC 01.1302(c)(1)(C), Fire Extinguisher Requirements; 1910.160(c)(1)(iii)/AAC 01.1305(c)(1)(C), Inspection Reports; 1910.213(s)(10)/AAC 01.1803(s)(10), Maintenance of Band Resaws; 1910.217(a)(1), (a)(2) and (a)(3)/AAC 01.1807(a)(1), Mechanical Power Press Installation; 1910.219(b)(4)/AAC 01.0809(b)(4), Governor Balls; 1910.219(d)(5)/AAC 01.0809(d)(5) Composition and Wood Pulleys;

1910.243(d)(3)(ii)/AAC 01.0903(d)(3)(B), Identification of Power Tool Loads; 1910.243 Table P–1/AAC 01.0903 Table 9–1, Identifiction of Caseloads; 1910.252(a)(5)(v)(b)/AAC 01.1002(a)(5)(E)(ii), Identification of Compressed Fuel Gas Hoses; 1910.252(a)(5)(vi)(d)/AAC 01.1002(a)(5)(F)(iv), Inspection of Regulator Fittings; 1910.252(c)(5)/AAC 01.1002(c)(5), Job Hazard Analysis; 1910.261(K)(23)/AAC 07.370(u)(1), Clearance of Stack Reels; 1910.264(f)(1)/AAC 11.110(b), Incorporation by Reference; 1910.265(c)(20)(iv)/AAC 07.215(v)(4), Sawmill Exhaust Pipe Criteria; 1910.266(d)(2)(ii)/AAC 07.180(d)(2)(B), Mobile Equipment Canopy Criteria; 1910.266(e)(1)(ii)/AAC 07.180(e)(1)(B), Flagman Requirement; 1910.266(e)(9), AAC 07.180(e)(d), Log Truck Binder Inspection.

The following standards were not amended in order to preserve certain protections and to be consistent with the state's retained standards: 1910.28(v)/AAC 01.1108(a), Scope of Scaffolding Section; 1910.109(b)(1)/AAC 09.110(b), Explosives Handling; 1910.109 Table H–21/AAC 09.210 Appendix A, Table of Distances; 1910.109(c)(1)(viii)/AAC 09.210(c)(5), Explosive Magazines; 1910.109(c)(2)(iii)/AAC 09.210(e)(26), Explosive Magazine Signs; 1910.109(c)(4)(iii)/AAC 09.210(d)(2)(B)(ii), Indoor Explosive Magazine Construction Criteria; 1910.109(c)(5)(viii)/AAC 09.210(e)(1), Explosive Magazine Competent Person; 1910.109(d)(3)(i)/AAC 09.230(c)(1), Transportation of Explosives; 1910.109(d)(3)(ii)/AAC 09.230(c)(2), Transportation of Explosives; 1910.109(e)(1)(iii)/AAC 09.310(a)(5), Blasting Protection; 1910.109(g)(5)(i)(c)/AAC 09.210(d)(2)(E), Transportation of Explosives; 1910.109(g)(5)(ii)(a)/AAC 09.410(d)(6), Storage of Explosives; 1910.109(g)(5)(iii)/AAC 09.410(e), Explosives Storage Supervision; 1910.109(g)(6)(ii)/AAC 09.230(c)(1), Transportation of Explosives; 1910.110(g)(1)/AAC 01.310(g)(1), Paragraph Application; 1910.252(a)(7)(ii)(c)/AAC 01.1002(a)(7)(B)(iii), Storage of Calcium Carbide; 1910.252(c)(3)(iii)/AAC 01.1002(c)(3)(C), Trolley Clevis Criteria; 1910.252(f)(1)(v)(b)/AAC 01.1002(f)(1)(E)(ii), Brazing with Cadmium; 1910.261(d)(4)(iv)/AAC 07.335(e)(5)(D), Portable Roll Chocks.

2. Decision

The above state standards have been reviewed and compared with the relevant Federal standards revocations. OSHA has determined that the state's standard continue to be at least as effective as the comparable Federal standards, as required by section 18(c)(2) of the Act. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska state plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of state law which included public comment and further public participation would be repetitious.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91–596, 84 Stat. 6108 (29 U.S.C. 667)).

Signed at Seattle, Washington this 15th day of December, 1987.

James W. Lake,

Regional Administrator.

[FR Doc. 88–12568 Filed 6–2–88; 8:45 am]

BILLING CODE 4510–26–M

Maryland State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18 (C) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated February 17, 1988, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.268(c) pertaining to revisions to Telecommunications Training Records as published in the **Federal Register** of September 28, 1987 (52 FR 36387); and (2) 29 CFR 1926.550, 1926.552 and 1926.703 pertaining to revisions to the Construction Industry Test and Inspection Records as published in the **Federal Register** of September 28, 1987 (52 FR 36381). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after a public hearing on January 6, 1988. These standards were effective on February 22, 1988.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, Room N–3700, Third Street and

Constitution Avenue, NW., Washington DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laes. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal Law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements or State law and further participation would be unnecessary.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667.)

Signed at Philadelphia, Pennsylvania this 1st day of March, 1988.

Linda R. Anku,

Regional Administrator.

[FR Doc. 88–12569 Filed 6–2–88; 8:45 am]

BILLING CODE 4510–26–M

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards, the State has submitted by letter dated January 27, 1988, from John A. Pompei, Administrator, Accident Prevention Division, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State rules OAR 437, Division 307, comparable to 29 CFR Part 1917, Marine Terminals, as published in the **Federal Register** (48 FR 30886) on July 5, 1983 and as amended and published in the **Federal Register** (49 FR 28550) on July 23, 1984.

Regional review of Oregon's initial submission, dated March 30, 1984, revealed several discrepancies. The submission was returned to the State for corrections on May 20, 1984.

On October 17, 1984, the State submitted a corrective amendment in response to Federal OSHA's amendment appearing in the **Federal Register** (49 FR 28550) on July 23, 1984. The corrective amendment did not address the identified discrepancies of the March 30, 1984 initial submission.

On March 13, 1985, the State submitted its second corrective amendment addressing an error in the State's scope of coverage of its Marine Terminals rules. This second corrective amendment did not address the identified discrepancies of the March 30, 1984 initial submission. Subsequently, on March 27, 1986, the State's submissions were forwarded to the OSHA National Office for review. On June 18, 1986, the National Office directed that additional corrections be made.

The State's initial submission was adopted and made effective on January 23, 1984 after the notice of proposed amendment of rules was mailed on January 5, 1984 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for a public hearing.

The State's first corrective amendment was adopted on September 24, 1984 with an effective date of September 25, 1984 after the notice of proposed amendment of rules was mailed on August 10, 1984 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for public hearing.

The State's second corrective amendment was adopted on February 22, 1985 with an effective date of March 1, 1985 after the notice of proposed amendment of rules was mailed on December 31, 1984 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for public hearing.

On January 27, 1988, a third corrective amendment, adopted on December 18, 1987 with an effective date of December 31, 1987, was forwarded to Region X for inclusion in the State's submittal for OAR 437, Division 307, Marine Terminals after the notice of proposed amendment of rules was mailed on August 26, 1987 to those on the Workers' Compensation Department mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for public hearing.

2. Decision

Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standard is substantially identical. The State standard contains some differences that are related to the scope of coverage, incorporation of the State rules numbering system, references to other State rules, and editorial changes. The State standard covers only public sector employment in marine terminal operations, in accordance with the scope of the State's authority, as specified in its Operational Status Agreement. The above standard has been reviewed and compared with the relevant Federal standard. OSHA has determined that the State standard is at least as effective as the comparable Federal standard, as required by section 18 (c)(2) of the Act. OSHA thereby approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Board, Labor

and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The State's rules are at least as effective as those amended by the Federal standard which were promulgated in accordance with Federal law including meeting requirements for public participation. The standards were adopted in accordance with the procedural requirement of State law which included opportunity for public hearings and comment and further public participation would be repetitious.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington this 11th day of March 1988.

James W. Lake,

Regional Administrator.

[FR Doc. 88-12570 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-26-M

Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as state Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adoption by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.
5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OHSA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to Federal review and approval. By letter dated February 3, 1988, from John T. Chambers, Assistant Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's Construction Standards (29 CFR 1926.58: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Corrections and Information Collection Requirements Approval, 52 FR 17752, May 12, 1987).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, Section 27-11-105(a)(viii).

State standards for 29 CFR 1926.58: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite were adopted by the Health and Safety Commission of Wyoming on August 14, 1987 (effective October 13, 1987), pursuant to Wyoming Statute 1977, Section 27-11-105. The State standards on Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite are substantially identical to the federal standards action, with the only exceptions being paragraph numbering and minor wordage appropriate only to the Wyoming statutes.

2. Decision

The above State Standards have been reviewed and compared with the relevant Federal Standard. It has been determined that the State standards are substantially identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective June 3, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado this 3d day of March, 1988.

Byron R. Chadwick,

Regional Administrator.

[FR Doc. 88-12571 Filed 6-2-88; 8:45 am]

BILLING CODE 4510-26-M

LIBRARY OF CONGRESS

Copyright Office

[Docket RM 88-5]

Compendium of Copyright Office Practices

AGENCY: Copyright Office, Library of Congress.

ACTION: Invitation to comment.

SUMMARY: This is to invite written comment by the public on two new chapters of the Compendium of

Copyright Office Practices which the Copyright Office intends to issue.

DATE: Written comments on the proposed chapters should be received on or before August 2, 1988.

ADDRESSES: The location in the Copyright Office where the proposed new chapters are available for public inspection and copying is Room LM–401 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, DC.

Ten copies of written comments should be addressed if sent by mail to: Richard E. Glasgow, Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, Room LM–407 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard E. Glasgow, Assistant General Counsel, Copyright Office, Library of Congress, Washington, DC. 20559. Telephone: (202) 287–8380.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Copyright Office intends to amend the Compendium of Copyright Office Practices, designated as Compendium II, by adding thereto two new chapters: Chapter 600 entitled REGISTRATION PROCEDURES and Chapter 1900 entitled RECORDS, INDEXES, AND DEPOSITS OF THE COPYRIGHT OFFICE; INSPECTION, COPYING, ADDITIONAL CERTIFICATES, AND OTHER CERTIFICATIONS.

Chapter 600 and Chapter 1900 are available for public inspection and copying at the Copyright Office. Following the expiration of the comment period, the Copyright Office intends to consider any comments received, make such changes as are appropriate, and issue the new chapters as a part of Compendium II. Copies of Compendium II are available for purchase from the Superintendent of Documents, United States Government Printing Office, as a looseleaf publication. The new chapters will be published by the Superintendent of Documents in the form of additions to Compendium II.

Dated: May 25, 1988.

Ralph Oman,

Register of Copyrights.

[FR Doc. 88–12547 Filed 6–2–88; 8:45 am]

BILLING CODE 1410–07–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on these infomation collections must be submitted by July 5, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administration Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682–5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Adminstrative Serivces Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revisions of two currently approved collections. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Dance Application Guidelines for FY 1990.

Frequency of collection: One time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated number of respondents: 1,100.

Estimated hours for respondents to provide information: 14,230.

Title: Literature Application Guidelines for FY 1990.

Frequency of collection: One time.

Respondents: Individuals and households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated number of respondents: 2,078.

Estimated hours for respondents to provide information: 6,005.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88–12466 Filed 6–2–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3055; License No. SNM–1981]

Georgia Power Co. et al., Burke County, Georgia; Finding of No Significant Impact, Issuance of Special Nuclear Material

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM–1981 to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the applicants) for the Vogtle Electric Generating Plant, Unit 2, located in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action: The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear material in the form of unirradiated fuel assemblies. In addition, the license would authorize the applicants to receive, possess, inspect, and use fission chambers containing enriched U-235. Because the fission chambers are sealed and contain only small amounts (gram

quantities) of nuclear material, storage and use of these materials will pose no threat to the environment. Therefore, the discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel at Vogtle, Unit 2.

The Need for the Proposed Action: The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel and to finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action: Once at Vogtle, Unit 2, the new fuel may be temporarily stored in its shipping containers prior to placement in the designated storage locations: The new fuel storage racks and the spent fuel storage racks located in the fuel handling building. No more than 40 loaded shipping containers will be temporarily stored at one time in the receiving area of the auxiliary building. This temporary storage of assemblies in their shipping containers will present no significant environmental impact or significant radiation exposure to plant workers.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for external contamination. The fuel is then transferred to its designated location. Criticality safety in the storage locations is maintained by limiting interaction between adjacent fuel assemblies. The staff has evaluated the new fuel area and the spent fuel pool and found both to be critically safe for all conditions of water moderation and/or reflection. The design of these storage locations, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel either under normal or abnormal conditions.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For a low-enriched uranium fuel bundle (<4 percent U-235 enrichment), the exposure rate at 1 foot from the surface is normally less than 1mR/hr; therefore, it is estimated that the exposure level of workers handling the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. Because of the low radiation exposure levels associated with the requested materials and activities and GPC's radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupational dose to workers or radiological impact to the environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packing material) is expected to be generated during fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

In the event that assemblies must be returned to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR Part 71. The package used for transport of the assemblies meets NRC approval requirements for normal conditions of transport and hypothetical accident conditions. No significant external radiation hazards are associated with the unirradiated assemblies because the radiation level from the clad fuel pellets is low and because the shipping packages must meet the external radiation standards in 10 CFR Part 71. Therefore, any shipment of unirradiated fuel by the applicants or any other authorized party is expected to have an insignificant environmental impact.

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is highly unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

Conclusion: The environmental impacts associated with the handling and storage of new fuel at Vogtle, Unit 2, are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action: The principal alternatives would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at Vogtle, Unit 2. Although denial of the special nuclear material license for Vogtle, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–1087) dated March 1985 related to this facility.

Agencies and Persons Consulted: The Commission's staff reviewed the applicants' request of January 22, 1988, and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM–1981. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the January 22, 1988 application related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland this 26th day of May, 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88–12487 Filed 6–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–269, 50–270 and 50–287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3 located in Oconee County, South Carolina.

The proposed amendments would revise the Station's common Technical Specifications (TS) to include operability and surveillance requirements for inadequate core cooling (ICC) instrumentation. The proposal includes revisions to the Table of Contents, Limiting Conditions for Operation and surveillance of ICC instrumentation.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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, 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 David B. Matthews, Director; Project Directorate II–3; (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 J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

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 of 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 15, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 27th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–12488 Filed 6–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

Duke Power Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 45 to Facility Operating License No. NPF–35 and Amendment No. 38 to Facility Operating License No. NPF–52 issued to Duke Power Company, et al. (the Licensee) which revised the Technical Specifications for operation of the Catawba Nuclear Station, Units 1 and 2 (the facility) located in York County, South Carolina. The amendments were effective as of the date of issuance.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 26, 1988 (53 FR 14874). No request

for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 19059) related to the action and has concluded that an environmental impact statement is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to the action see (1) the application for amendments dated March 23, 1988, (2) Amendment No. 45 to License No. NPF-35 and Amendment No. 38 to License No. NPF-52 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 27th day of May 1988.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12489 Filed 6-2-88; 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 Facility 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 §§ 3.2, 4.2 and 6.9 of the Technical Specifications to reflect the use of an enriched sodium pentaborate solution in the Standby Liquid Control System (SLCS).

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 July 5, 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, designed 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, 200 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 May 10, 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 27th day of May, 1988.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12490 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-57 and NPF-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The licensee proposes to amend the Technical Specifications (TS) in response to Generic Letter 88-06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements." The proposed amendment replaces TS Figure 6.2.1-1, "Offsite Organization," TS Figure 6.2.2-1, "Unit Organization," and Environmental TS Figure 5.2-1, "Organization Structure Related to Environmental Activities" with more general organization requirements. These general requirements capture the essential organizational aspects that are contained in the TS Figures 6.2.1-1, and Environmental TS Figure 5.2-1.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change involves no physical alteration of the plant or changes to setpoints or operating parameters. The change does not affect operation, maintenance, or testing of the plant. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. A new or different kind of accident could therefore not result.

3. The proposed change does not significantly reduce a margin of safety. The general organization requirements being added to the Technical Specifications will assure that those organizational features necessary for safe plant operation will continue to be maintained. Details of the organizational structure will be maintained in the Final Safety Analysis Report and updated regularly. Margins of safety are therefore not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission to determine that the proposed change involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearings. Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC the filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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 petition for leave to intervene. Request 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 particularly 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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 David B. Matthews: 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street NE, Atlanta, Georgia 30043, 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).

For futher details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 27th day of May 1988.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Project Directorate II-3, Division of Reactor Projects, I/II.

[FR Doc. 88-12491 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-68, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensee), for operation of the Vogtle Electric Generating Plant, Unit 1, located in Burke County, Georgia.

The licensee proposes to amend the Technical Specifications (TS) by replacing TS Figure 6.2-1, "Offsite Organization" with more general organizational requirements. These general requirements capture the essential aspects of the organizational structure that are defined by the TS Figures 6.2-1, and 6.2-2. These changes are consistent with the guidance provided in Generic Letter 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements." This amendment request was dated May 6, 1988, and supersedes the amendment request dated December 28, 1987 noticed in the **Federal Register** on March 9, 1988 (53 FR 7592).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change involves no physical alteration of the plant or changes to setpoints or operating parameters. The change does not affect operation, maintenance, or testing of the plant. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. A new or different kind of accident could therefore not result.

3. The proposed change does not significantly reduce a margin of safety. The general organization requirements being added to the Technical Specifications will assure that those organizational features necessary for safe plant operation will continue to be maintained. Details of the organizational structure will be maintained in the Final Safety Analysis Report and updated regularly. Margins of safety are therefore not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject faiclity operating license and any person whose interest may be affected by this proceeding and who wishes to particiapte as a party in the proceeding must file a written petition for leave to intervene. Request 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 requried 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 shall 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 schedule 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 basis 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no signficant hazards consideration, the Commission may issue the amendment and make it effective, nowithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstnaces change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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 David B. Matthews: 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043, 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).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Burke County Public Library, 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 27th day of May, 1988.

For the Nuclear Regulatory Commisson.

Jon B. Hopkins,

Project Manager, Project Directorate II-3, Division of Reactor Projects. I/II.

[FR Doc. 88-12492 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-388]

Licensee; Issuance of Amendment to Facility Operating License; Pennsylvania Power and Light Co.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 49 to Facility Operating License No. NPF-22, issued to Pennsylvania Power and Light Company (the licensee), which revised the Technical Specifications for operation of the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

The amndment was effective upon startup following Unit 2 second refueling outage expected in May 1988 except for those changes which have been marked (*) to indicate that they will be effective upon startup following Unit 2 third refueling outage expected at the end of November 1989.

The amendment modified the SSES, Unit 2 Technical Specifications' Table 3.6.3-1 related to "Primary Containment Isolation Valves."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 11, 1988 (53 FR 7995). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 23, 1987, and supplemented March 11 and 24, 1988 (2) Amendment No. 49 to License No. NPF-22, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 24th day of May 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12493 Filed 6-2-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25753; File No. SR-MSE-88-4]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Increased Floor Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

MSE is proposing to increase the monthly trading floor space rental and equipment fees. The proposal would also establish two new fees for post space and booth space.[1]

[1] In its filing, the MSE included the proposed schedule of fees which is available from the Commission at the address noted in Section III below or from the MSE.

II. Self-Regulatory Organization's Statement on the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purposes of, and Statutory Basis for, the Proposed Rule Change

The MSE has revised its schedule of fees for trading floor space and equipment rental. The floor rental fees are based on actual floor space costs, including rent and utilities. The new monthly charges for the equipment will pass through to members who use the equipment the actual maintenance costs and provide for approximately 50% of the actual cost of the equipment. In general, the revised fees will more accurately reflect the actual costs of the equipment and space.

The revised fee schedule is consistent with Section 6 of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSE's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 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 MSE. All submissions should refer to File No. SR-MSE-88-4 and should be submitted by June 24, 1988.

IV. Commission Findings and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(4) in that the proposed fees constitute an equitable allocation of reasonable fees among members and member firms using its facilities. As noted above, the increased and new fees are related to the acutal cost of equipment and space on the MSE floor. The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12473 Filed 6-2-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

May 26, 1988

The Midwest Stock Exchange, Inc. ("MSE") on May 6, 1988, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-3490	DRAM	Micron Technology Inc. Common, $.10 Par Value.
7-3491	ORCL	Oracle Systems Corp. Common $.01 Par Value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-3492	PGULF	Pegasus Gold, Inc. Common No Par Value.
7-3493	SHON	Shoney's Inc. Common $1.00 Par Value.

The MSE applied to withdraw UTP on Pegasus Gold, Inc. because it was recently listed on the American Stock Exchange and is thus ineligible to be traded on a UTP basis. The MSE applied to withdraw UTP in Shoney's Inc. because the issuer will soon undergo a recapitalization that will significantly reduce the value of the security.

Comments

Interested persons are invited to submit on or before June 16, 1988, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are requested to address whether they believe the requested withdrawal of UTP would be consistent with section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under section 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12479 Filed 6-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25754; File No. SR-NYSE-88-15]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has established fees for its new Trading Floor Telephone System that will become effective immediately on filing with the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At the turn of the century, concomitant with the construction of a new Trading Floor, the Exchange installed telephones in the booth spaces of members and member organizations located around the periphery of the Floor. These telephones were designed

for the Exchange for its particular needs associated with the operation of the Floor and could accommodate up to four private telephone lines. Each instrument was equipped with dual handsets so that two people could talk on the same or different lines at the same time.

Some 25–30 years ago, as volume on the Exchange increased, the Exchange had new telephones designed that could handle first five, and then six private lines with dials or touch-tone "pads" as an optional, add-on feature. However, six lines per space was found to be incapable of meeting the needs of the Exchange's membership in terms of communication. To help meet these needs, the Exchange installed two telephones in a space when requested to do so by the space holder.

In the fall of 1985, the Exchange appointed a number of committees to look at all aspects of systems and operations for its new trading area known as the "Expanded Blue Room" (EBR) which was opened in January of this year.

In recognizing the fact that its telephone system was not adequate to meet the needs of the membership and the anticipated volume that was forecast for the future, it appointed a Communications Committee to review previous telephone designs and the needs of members who handle specific types of brokerage business, including retail, institutional, arbitrage and hedging functions. The result of this committee's work and the Exchange staff's own efforts has been to design a totally new telephone system that will replace an interim telephone system in the EBR beginning in mid-August of this year, and eventually replace all of the telephones used at the booth spaces and Trading Posts in the other three trading areas.

Up to the present time, the Exchange has provided a telephone instrument at no cost to a spaceholder. Because of the significant research, development and anticipated operational costs associated with the new telephone system, the Exchange can no longer underwrite the cost of the Trading Floor telephone system and proposes to implement appropriate charges for it. If approved, these charges will apply to both the interim telephone system operating in the EBR and the new system as it is expanded to the remainder of the Floor.

Some of the salient features of the new Trading Floor Telephone System are as follows:

- Rugged case and electronics that can withstand heavy use
- 40-line capability
- Speed Dialing
- Keypad locking to prevent unauthorized use
- Conference Calling
- Adjustable volume control
- Handset Confidencer
- "Trouble Desk" to constantly monitor system operation
- Push-button "trouble key" eliminates the need to utilize a dial line to notify the "Trouble Desk" of a problem

The Exchange contends that, while members will be incurring new fees from the Exchange, if approved, they will achieve offsetting savings as a result of no longer having to pay outside vendors for many telephone services.

A list of the proposed charges is set forth below:

INSTRUMENT CHARGES

Instrument	Proposed monthly charge
30 Line Booth Phone	$100.00
5 Line Post Phone	20.00
Single Line Phone	10.00

Service Charges

Task	Proposed price[1]
Install Multi-Line Phone	$250.00
Install Single Line Phone	150.00
Move Multi-Line Phone In Booth	100.00
Move Single Line Phone in Booth	50.00
Relocate Multi-Line Phone	300.00
Relocate Single Line Phone	100.00
Remove Phone	50.00
Program Multi-Line Phone	50.00
Install Volume Control Handset	[2] 125.00
Install Phone Handset Confidencer	[3] 75.00
Install Phone Line	100.00
Rewire Phone Line	150.00
Disconnect Phone Line	50.00
Install Bridged Line Appearance	150.00
Remove Bridged Line Appearance	50.00
Change Phone Line Subscriber	50.00
Damaged Phone Equipment	[4]0
Miscellaneious Telephone Charge	[5]0

(1) The Exchange will make all efforts to perform services during the hours covered by the maintenance contract, however, tasks performed during over-time hours will be billed at a rate of 25% above the normal service charge.
(2) Includes price of handset.
(3) Includes price of confidencer
(4) Cost of equipment plus 33% (plus labor when applicable).
(5) To be billed at $80 per hour in 15 minute increments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The 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 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 persons, other than these 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 at 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 NYSE. All submissions should refer to File No. SR–NYSE–88–15 and should be submitted by June 24, 1988.

IV. Commission Findings and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(4) in that it constitutes an equitable allocation of reasonable charges among the members of the Exchange using the improved telephone facilities. We also note that previously members had to pay outside vendors for servicing of telephones and equipment. Under the proposed rule, the NYSE will now be providing these services, for a fee, to members.

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12474 Filed 6-2-88; 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.

May 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:

Lawter International, Inc.
Common Stock, $1.00 Par Value (File No. 7-3478)
Lincoln National Convertible Securities Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-3479)
La Quinta Motor Inns, Inc.
Common Stock, $0.10 Par Value (File No. 7-3480)
Liggett Group, Inc.
Common Stock, $0.10 Par Value (File No. 7-3481)
Lomas Mortgage Corporation
Common Stock, $0.01 Par Value (File No. 7-3482)
Luby's Cafeterias, Inc.
Common Stock, $0.32 Par Value (File No. 7-3483)
MAI Basic Four, Inc.
Common Stock, $0.25 Par Value (File No. 7-3484)
MEI Diversified, Inc.
Common Stock, $0.05 Par Value (File No. 7-3485)

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 June 15, 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. 88-12477 Filed 6-2-88; 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.

May 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:

Foote, Cone & Belding Communications, Inc.
Common Stock, $0.33 ⅓ Par Value (File No. 7-3486)
The Marcade Group, Inc.
Common Stock, $0.10 Par Value (File No. 7-3487)
Mark IV Industries, Inc.
Common Stock, $0.01 Par Value (File No. 7-3488)
McLean Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7-3489)

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 June 15, 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. 88-12478 Filed 6-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25747; File No. SR-Phlx-88-3]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposal Rule Change

On January 28, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a rule change that would amend the Exchange's Rule 722, which establishes the maintenance margin [3] requirements for margin accounts.[4]

The proposed rule change was noticed in securities Exchange Act Release No. 25416, 52 FR 7617 (March 9, 1988). No comments were received on the proposal.

The proposal is designed to conform Rule 722 with the 1984 revisions to Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T")[5], and to coordinate with the recently approved New York Stock Exchange ("NYSE") proposed revision to its margin rule, NYSE Rule 431.[6] The changes to Phlx Rule 722 track those recently approved by the Commission with regard to NYSE Rule 431.

The Phlx's proposal does not affect customer initial [7] or maintenance

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240. 19b-4 (1986).

[3] Maintenance margin is the amount of equity required to be maintained in a customer's account, and will fluctuate depending on market value of the securities in the account.

[4] Subsequent to its initial filing, the Phlx made some clarifying modifications to the proposal. *See* letter to Sharon L. Itkin, Staff Attorney, Division of Market Regulation from Michele R. Berkowitz, Staff Counsel, Philadelphia Stock Exchange, Inc. (February 29, 1988).

[5] 15 CFR Part 220 (1985). Regulation T establishes the amount of credit that can be extended by broker-dealers for purchases and short sales of securities, other than exempted securities.

[6] *See* SR-NYSE-86-4, Release No. 34-22875, (February 27, 1987).

[7] Initial margin is the amount of equity required to be deposited in a customer's account upon purchase or short sale of a security.

margin requirements for equity securities; those remain at 50% and 25% of market value, respectively. The proposal modifies maintenance margin requirements for debt securities, including U.S. government securities, municipal securities, and non-convertible corporate debt securities.

The proposal would change the current maintenance margin requirement on U.S. government obligations from 5% of principal amount of the obligation to a sliding scale of 1% to 6% of the current market value of the obligation based on maturity date.[8] In addition, zero coupon bonds with five years or more to maturity would have a minimum requirement of 3% of the principal amount.

Maintenance margin requirements for municipal securities, currently the lower of 25% of market value or 15% of principal amount, would be changed to the greater of 15% of the current market value of 7% of the principal amount.[9] This change would lower margin requirements for municipal securities purchased below par and raise the requirements for those purchased above par.

The proposal would change the margin requirements for noncovertible corporate debt securities from the current 25% of market value to the greater of 20% of market value or 7% of principal amount.[10] In addition, the proposal would provide for specific margin requirements for Mortgage Related Securities.[11] As stated in the approval order for the NYSE's proposal, these privately issued Mortgage Related Securities are not eligible for lower maintenance margin rate for government securities. Therefore, like the NYSE, Phlx now proposes to establish a margin requirement of 5% of market value for Mortage Related Securities that are carried in certain exempt accounts as defined by the rule. For mortgage-back securities that do not meet the statutory definition, or those not carried in defined exempt accounts, the maintenance margin rates for noncovertible corporate debt securities would continue to apply.

The proposal also would permit the use of accrued interest as an offset to the maintenance margin required to be maintained for exempted securities and marginable corporate debt.

Further, the proposal would impose a net capital deduction on member firms when one or more accounts is guaranteed by another account and the margin deficiences guaranteed by any guarantor are in excess of 10 percent of the member organization's excess net capital.[12]

The Phlx proposal also amends the requirements for collection of margin deficiencies in customer accounts. Currently, section (c)6 of Rule 722 provides that the required amount of maintenance margin must be obtained * * * "within a reasonable time." The Exchange proposes to change section (c)6 to provide that the required maintenance margin be obtained within 15 business days of the date of the deficiency, unless the Phlx has granted an extension of time.

Additionally, the proposal provides for a Section (e) which would define specific terms used in the Rule at the end of the rule rather than within the text itself. Finally, the Exchange proposes to reword the rule where appropriate to conform to the Current Regulation T.

The Exchange states that because most of the significant changes relate to margin on debt securities, the proposed amendments to rule 722 do not strongly impact products traded on the Phlx. Therefore, the Phlx believes that these amendments should not impose any significant effect on members at this time. Nevertheless, the exchange has provided that voluntary compliance with the proposal will be permitted 3 months after Commission approval of the rule change and compliance will be mandatory 6 months after such approval.

The Phlax contends that the rule proposal is designed to protect investors and the public interest, and is consistent with section 6 of the Act by ensuring that margin requirements reflect current regulatory and credit risk concerns. In addition, the Exchange states that the rule change is consistent with section 7(a) of the Act and the rules and regulations of the Board of Governors of the Federal Reserve System enacted pursuant to that provision, in that it is designed for the purpose of preventing the excessive use of credit for the purchase or carrying of securities.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6,[13] and the rules and regulations thereunder. The proposal, virtually identical to current NYSE rules, generally would lower maintenance margin requirements for government, municipal and certain non-convertible corporate debt securities. The Commission believes that the proposed rates appear to be reasonable and to provide member organizations adequate protection against adverse short-term market movements of securities in customer margin accounts.

In addition, that portion of the proposal that would allow member firms the discretion to use accrued interest on all debt securities to offset maintenance margin requirements appears consistent with the Act. As set forth in the Commission's approval order for SR-NYSE-86-4, accrued interest on debt securities may be used only to satisfy calls for maintenance margin deficiencies and not to finance additional purchases. In addition, the Commission expects member firms to assess carefuly whether under certain circumstances a higher margin requirement would be necessary.[14]

With regard to that portion of the proposal which would provide 15 business days in which to collect margin deficiencies in customer accounts, the Commission is concerned that too lengthy a time period in which to collect margin might expose member firms to increased risk. As discussed in the approval order for SR-NYSE-86-4, the Commission believes that seven business days appears to provide more than ample time in which to collect maintenance margin deficiencies. In SR-NYSE-865-4, the NYSE initially proposed a seven business day time period for the collection of deficiencies, but later lengthened the period to 15 business days in response to membership opposition. Both the NYSE and Phlx maintain that a 15 business day provision should eliminate any uncertainty over what length of time would be deemed "reasonable." The Commission, in approving SR-NYSE-86-

[8] *See* section (b)2a of Phlx Rule 722. This change would lower margin requirements for shorter term U.S. government securities while increasing requirements for longer term U.S. government securities.

[9] *See* section (b)2b of Phlx Rule 722.

[10] This amendment would reduce the requirements for nonconvertible corporate debt securities eligible for "good faith" margin under Regulation T. *See* section (b)2c of Phlx Rule 722.

[11] As defined in section 3(a)(41) of the Act, a Mortgage Related Security represents an ownership interest in, or is secured by, first lien mortgages on residential property. These securities must be rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

[12] Excess net capital is the amount of net capital that exceeds minimum net capital required by Commission or self-regulatory organization rule. *See* proposed section (c)(4) of Phlx Rule 722.

[13] 15 U.S.C. 78f (1982).

[14] As described in SR-NYSE-86-4, Release No. 22875, one such situation would be where there is potential for accrued interest on some low grade bonds to offset a signficant percentage of a margin deficiency.

4, determined that it would be prudent to approve the maintenance margin collection provision on a two year pilot basis, in conjunction with an exchange monitoring program to provide comprehensive information with which to assess whether member firms require three weeks to collect margin deficiencies. The Commission believes it appropriate to accord the Phlx the same pilot treatment. In order to coordinate with the NYSE's pilot, and assess both programs at approximately the same time, the Commission is approving this portion of the Phlx's proposal for one year from the date of this approval order. During the one year pilot the Exchange will monitor compliance with the time limit and review the circumstances under which the member firms incurred net capital charges for customer margin deficiencies.[15] At least one month prior to the conclusion of the one year pilot, the Commission expects Phlx to submit a report which includes data regarding compliance with the time limit. The data obtained through the exchange's monitoring program will enable the Commission to determine whether seven business days is sufficient time in which to collect maintenance margin deficiencies, or whether it is necessary to allot 15 business days for such purposes. The Phlx should submit at the conclusion of the pilot a proposed rule change either to retain or modify the proposed 15 business day margin collection period based on the findings from its monitoring program.

As stated in the approval of the NYSE's proposal, the Commission believes that the proposed margin requirement for mortage related securities that meet the definition in section 3(a)(41) of the Act and that are carried in certain defined exempt accounts is consistent with the Act because it appears to protect adequately a broker-dealer against the risks of carrying these securities and will apply only to those relatively more creditworthy and sophisticated accounts.

The Commission finds for the reasons discussed above that the Phlx's proposal is consistent with section 6 of the Act and the rules thereunder applicable to a national securities exchange, and with section 7 of the Act, in that the proposal is consistent with the requirements in Regulation T.

[15] The Commission's net capital rule requries a broker-dealer to deduct from its net capital the amount of cash required to satisfy a call for margin deficiency in a customer's account outstanding more than five business days. *See* Rule 15c3-1(c)(2)(xii) (17 CFR 240.15c3-1(6)(2)(xii) (1986)).

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the Phlx rule proposal be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

Dated: May 25, 1988.

[FR Doc. 88-12476 Filed 6-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16412; 811-1056]

Capital Southwest Corp.; Deregistration

May 26, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of declaration of deregistration under the Investment Company Act of 1940 (the "1940 Act").

Registrant: Capital Southwest Corporation ("Registrant").

Relevant 1940 Act Sections: Sections 8(f) and 54(a).

Summary of Notice: The SEC proposes to declare by order on its own motion that Registrant has ceased to be an investment company.

Hearing or Notification of Hearing: If no hearing is ordered, the motion will be granted. Any interested person may request a hearing on this motion, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Registrant, with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Registrant, c/o William R. Thomas, 12900 Preston Rd., Suite 700, Dallas, Texas 75230.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847 or Brion R. Thompson, Special Counsel (202 272-3106 (Division of Investment Management).

Statement of Facts:

1. Information contained in the files of the SEC indicate that Registrant registered under the 1940 Act as a closed-end, non-diversified, management investment company on May 1, 1961. Registrant is a corporation organized under the laws of the State of Texas and has its principal place of business in Texas.

2. On March 29, 1988, Registrant elected to be regulated as a business development company pursuant to section 54 of the 1940 Act. Thus, Registrant is excluded from the definition of an investment company under section 6(f) of the 1940 Act and is exempted from registration as an investment company under section 8 of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12475 Filed 6-2-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Business Development Counseling Record.

Form Nos.: SBA 1062.
Frequency: When client assisted.
Description of respondents: The form provides information which is used to plan, monitor and control programs of assistance and to provide data to Congress and OMB on that assistance.
Annual Responses: 300,000.
Annual Burden Hours: 45,000.

Title: For Profit Cosponsored Training Program.
Form Nos.: Questionnaire.
Frequency: On occasion.
Description of Respondents: The SBA was granted authority to cosponsor training programs with for profit organizations under Pub. L. 98–362. The purpose of the questionnaire is to ascertain client reaction to these programs.
Annual Responses: 30,000.
Annual Burden Hours: 5,000.

Title: Loan Guaranty Agreement.
Form Nos.: SBA 1175.
Frequency: Quarterly.
Description of Respondents: Guaranty loans are made to financial institutions. Participants are required to report quarterly on whether the accounts are current or not and the outstanding principal balance.
Annual Responses: 18,500.
Annual Burden Hours: 18,500.

Title: Pollution Control: Procedures for Guarantee Application.
Form Nos.: SBA 1136, 1136A.
Frequency: Once per application determination
Description of Respondents: Small businesses requesting Federal assistance to aid in pollution control financing are required to provide the appropriate business and historical information for determining project feasibility and creditworthiness.
Annual Responses: 12.
Annual Burden Hours: 690.

Title: SBIC Financial Reports.
Form Nos.: SBA 468.1, SBA 468.2, SBA 468.3, SBA 468.4.
Frequency: Annually.
Description of Respondents: To properly administer the Small Business Investment Act, as amended, it is essential that complete financial statements, with supporting schedules be submitted for review of regulatory compliance and for credit analysis prior to providing financing to the SBIC.
Annual Responses: 521.
Annual Burden Hours: 6773.

Title: Management Development Plan.
Form Nos.: SBA 1100.
Frequency: On occasion.
Description of Respondents: Used to assess the level of assistance and clients needs and to identify problem areas that should be addressed.
Annual Responses: 50,000.
Annual Burden Hours: 50,000.

William Cline,
Chief, Administrative Information Branch.

[FR Doc. 88–12500 Filed 6–2–88; 8:45 am]
BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–64]

Termination of Section 301 Investigation; Korea's Restrictions on Access to Its Cigarette Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to terminate an investigation under section 301.

SUMMARY: On Feb. 16, 1988, the U.S. Trade Representative initiated an investigation of the Republic of Korea's policies and practices with respect to the importation, distribution and sales of cigarettes. On May 27, 1988, the United States and the Republic of Korea reached agreement on providing non-discriminatory access to the Korean market for foreign manufactured cigarettes. In light of this agreement, the investigation under section 301 of the Trade Act of 1974, as amended, has been terminated.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra Kristoff, Deputy Assistant U.S. Trade Representative, (202) 395–4755, or Catherine Field, Associate General Counsel, (202) 395–3432, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On Jan. 22, 1988, the United States Cigarette Export Association filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Government of the Republic of Korea (Korea) and its instrumentality, the Korean Monopoly Corporation, engage in acts, policies and practices that are unreasonable or discriminate against imports and burden or restrict U.S. commerce..

On Feb. 16, 1988, the U.S. Trade Representative initiated an investigation of the Korean government's policies and practices affecting efforts to obtain fair and equitable access to the Korean cigarette market (53 FR 4926). The United States and Korea have concluded an agreement providing non-discriminatory and open access to the Korean cigarette market, which will take effect on July 1, 1988. Since this dispute has been satisfactorily resolved, we have terminated the investigation.

Judith Hippler Bello,
General Counsel.

[FR Doc. 88–12611 Filed 6–2–88; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Amherst County/City of Lynchburg, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advice the public that a draft environmental impact statement will be prepared for a proposed highway project to be located in Amherst County and the City of Lynchburg, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), Lynchburg District Office, will prepare a draft environmental impact statement (DEIS) on a proposal to improve Route 29 in Amherst County and the City of Lynchburg Virginia. The proposed improvement would involve construction of a four to six-lane limited access bypass route of Madison Height and Lynchburg, Virginia from existing Route 501 in the City of Lynchgurg, Virginia to Amherst, Virginia, for a distance of approximately 15.0 miltes.

Improvements to the existing corridor are considered necessary to provide for the safe and efficient movement of existing and projected traffic and provide relief from heavy congestion on the existing Route 29. This proposal will include the construction of a bridge crossing the James River and new interchanges and connector routes for existing Route 210 and Route 130 in Amherst County.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management improvements to existing four-lane roadway (improve existing street); (3) mass transit; (4) constructing a four to six-lane, limited access bypass on new location. The various build alternatives will incorporate variations of vertical and horizontal grade alignment of roadway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public informational meetings, location and design meetings and public hearings will be held between June 1988 and December 1989. Public notice will be given indicating the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project.

Issued on May 25, 1988.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 88-12576 Filed 6-2-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Blue Earth, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Blue Earth County, Minnesota.

FOR FURTHER INFORMATION CONTACT: James A. Cheatham, District Engineer, Federal Highway Administration, Suite 490, Metro Square Building, St. Paul, Minnesota 55101, Telephone: (612) 290-3243.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve T.H. 14 in Blue Earth County, Minnesota. The proposed project would include either 2-lane or 4-lane construction along new alignment or along the existing Trunk Highway (T.H.) 14 alignment from Mankato to east of the east junction (Jct.) of T.H. 60. Alternatives being considered at this time include 2-lane and 4-lane reconstruction on the existing alignment, construction of a 2-lane or 4-lane roadway on new alignment north of Eagle Lake (7 alternative alignments), construction of a 2-lane or 4-lane roadway on new alignment south of Eagle Lake (2 alternative alignments), construction of a 2-lane or 4-lane facility which would begin at the North Mankato-Mankato Bypass but would tie into the existing T.H. 14 alignment west of the City of Eagle Lake and a no-build alternative. Several of these alternatives may be dropped from consideration or others may be added as a result of the scoping process. The length of the project will depend on the alignment selected but will be between 7 and 10 miles. This project will involve a crossing of the Dakota, Minnesota and Eastern Railroad.

A Scoping Document providing information about the project including potential alternatives and their impacts was prepared and distributed to interested parties and agencies in July of 1987. A scoping meeting to receive agency and public comments as part of the EIS scoping process was held at the Legion Hall in Eagle Lake, Minnesota on August 27, 1987. To receive any additional comments since that meeting, the comment period will remain open until 30 days after publication of this notice in the Federal Register. Information was sent to federal, state and local agencies that may have an interest in this project and scoping meeting, to solicit their comments and to give them an opportunity to voice their concerns. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on May 25, 1988.

James A. Cheatham,

District Engineer, St. Paul, Minnesota.

[FR Doc. 88-12448 Filed 6-2-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Pinellas and Pasco Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Pinellas and Pasco Counties, Florida.

FOR FURTHER INFORMATION CONTACT: D.B. Luhrs, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to improve U.S. 19 (S.R. 55) in Pinellas and Pasco Counties, Florida. The proposed improvement would involve the reconstruction of U.S. 19 (S.R. 55) from Gandy Boulevard (S.R. 694) in Pinellas County, to Alternate U.S. 19 (S.R. 595) in Pasco County. Total project length is 24.6 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternates under consideration include: (1) Taking no action; and (2) widening to provide a 6- and 8-lane expressway with frontage roads, plus interchanges at major cross roads, grade separations at minor cross roads.

Federal, State, and local agencies have contributed early coordination comments through the State advance-notification process. Additionally, a project planning team developing this project has contacted State, Federal, and local agencies for information relative to land-use planning and local planning needs. A public information workshop was held to solicit public comment. In addition, a public hearing will be held. Public notice will be given of the time and place for the public hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions

are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above.

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

Issued on May 23, 1988.

Dennis B. Luhrs,

District Engineer, Tallahassee, Florida.

[FR Doc. 88-12447 Filed 6-2-88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before July 18, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Steamtown Museum

(Waiver Petition Docket Number RSGM-87-6)

The Steamtown Museum seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. These locomotives operate over approximately 12 miles of former Erie-Lackawanna track between Scranton and Moscow, Pennsylvania. Steamtown states that the operation is through mostly rural countryside, where vandalism has not been a problem. The carrier indicates that its excursion trains operate at 15 mph and does not foresee track improvements permitting faster speeds in the future.

Delta-Western (Indi-Bel, Inc.)

(Waiver Petition Docket Number RSGM-87-19)

The Delta Western (Indi-Bel, Inc.) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates an average of three times per week from April to November yearly over approximately 1,000 feet of Columbus and Greenville Railroad tracks near Indianola, Mississippi. There have been no incidents of vandalism since the locomotive was purchased in March 1987.

Wisconsin and Calumet Railroad Company, Inc.

(Waiver Petition Docket Number RSGM-87-20)

The Wisconsin and Calumet Railroad Company (WICT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. The locomotives operate over approximately 270 miles of track between Prairie Du Chien and Waukesha, Wisconsin, and between Madison and Scroto Mills, Wisconsin. The operation is predominately through rural areas and small agricultural communities. The WICT has been operating four other locomotives and two cabooses under an existing FRA glazing waiver, RSGM-85-28, over approximately 152 miles of its railroad.

Keokuk Junction Railway

(Waiver Petition Docket Number RSGM-87-21)

The Keokuk Junction Railway (KJRY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate over approximately 29 miles of track between Keokuk, Iowa, and La Harp, Illinois. The carrier states that there have not been any acts of vandalism, rock throwing, or shooting at trains operating on the KJRY.

Dodge City, Ford and Bucklin Railroad Company

(Waiver Petition Docket Number RSGM-87-22)

The Ford County Historic Railroad Preservation Foundation, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five passenger coaches. The petitioner is planning to operate these coaches as a historic passenger train on approximately 26 miles of former Rock Island trackage near Dodge City, Kansas. The operation will be established as the Dodge City, Ford and Bucklin Railroad Company.

Mississippi Delta Railroad

(Waiver Petition Docket Number RSGM-87-23)

The Mississippi Delta Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and one caboose. The carrier states that the area of operation is located in rural Mississippi. The carrier indicates that they are unaware of any incidents of vandalism, or unusual safety hazards that have occurred on the property, that would warrant replacement of glazing.

Pee Dee River Railway

(Waiver Petition Docket Number RSGM-87-24)

The Pee Dee River Railway seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates on approximately 15 miles of track from McColl to Marlboro, South Carolina. The petitioner states that the area of operation is rural. Since it began operations in October 1987, the carrier has not experienced any incidents of vandalism concerning its equipment. The carrier feels that the installation of certified glazing would be an unnecessary financial burden to its operating costs.

Indiana and Ohio Rail Corporation

(Waiver Petition Docket Number RSGM-87-25)

The Indiana and Ohio Rail Corporation seeks a permanent waiver of compliance with certain provisions of

the Safety Glazing Standards (49 CFR Part 223) for four locomotives. One locomotive is operated on approximately 51 miles of track near Chillicothe, Ohio, by the Indiana and Ohio Eastern Railroad. The other three locomotives are operated by the Indiana and Ohio Central Railroad on approximately 44 miles of track between Logan and Columbus, Ohio. Both areas of operation are located in rural settings, and neither operations have had any instances of trains being stoned or other acts of vandalism. The carrier feels that the installation of certified glazing would be an unnecessary cost.

The Great Western Railway Company

(Waiver Petition Docket Number RSGM–87–26)

The Great Western Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for seven passenger coaches. The passenger coaches operate on approximately 80 miles of track, through rural areas. The coaches are operated two to three times per month on two excursion routes. One route is from Longmont to Eaton, Colorado. The second route is from Loveland to Johnstown, Colorado. The carrier has not experienced any injuries due to broken glazing or damage due to vandalism and feels that the installation of certified glazing is unnecessary.

Cedar Rapids and Iowa City Railway Company

(Waiver Petition Docket Number RSGM–87–27)

The Cedar Rapids and Iowa City Railway Company (CIC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. The locomotives operate over a total of approximately 87 miles of track: about 31 miles between Cedar Rapids and Hills, Iowa; about 18 miles between Cedar Rapids and Homestead, Iowa; and the balance in switching tracks in Cedar Rapids and Iowa City. The carrier has been operating seven additional locomotives under an existing FRA glazing waiver (RSGM–80–69) for several years without any reported incidents of injuries due to broken glass or acts of vandalism.

Issued in Washington, DC on May 25, 1988.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–12443 Filed 6–2–88; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8800.
Type of Review: New.
Title: Application for Additional Extension of Time to File Return for a U.S. Partnership or for Certain Trusts.
Description: Form 8800 is used by partnerships and by certain trusts to request an additional extension (of up to 3 months) of time to file Form 1065, Form 1041, or Form 1041s. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.
Respondents: Farms Businesses or other for-profit, Small business or organizations.
Estimated Burden: 4,606 hours.

OMB Number: 1545–0153.
Form Number: IRS Form 3206.
Type of Review: Extension.
Title: Information Statement by United Kingdom Withholding Agents Paying Dividends from United States Corporations to Residents of the U.S. and Certain Treaty Countries.
Description: Used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the U.S. has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax was withheld.
Respondents: Businesses or other non-profit.
Estimated Burden: 2,069 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 88–12480 Filed 6–2–88; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

[T. D. 88–29]

Conditional Approval of a Commercial Gauger; Gulf Coast Independent Maine Surveyors, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Conditional Approval of a Commercial Gauger.

SUMMARY: Pursuant to 151.13, Customs Regulations (19 CFR 151.13), Gulf Coast Independent Marine Surveyors, Inc., 3331 Taft (P.O. Box 1410), Groves, Texas 77619, applied to Customs for approval to gauge imported petroleum and petroleum products and bulk liquid organic chemicals. .

Customs has determined that the application is complete and acceptable. Therefore, under the provision of 151.13(c), Gulf Coast Independent Marine Surveyors, Inc., is conditionally approved to guage imported petroleum and petroleum products and bulk liquid organic chemicals in all Customs districts.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories & Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2446).

Dated: May 26, 1988

John B. O'Loughlin,

Director, Office of Laboratories Scientific Services.

[FR Doc. 88–12462 Filed 6–2–88; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 88–28]

Conditional Approval of a Commercial Gauger; Unimar, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Conditional Approval of a Commercial Gauger.

SUMMARY: Pursuant to 151.13, Customs Regulations (19 CFR 151.13), Unimar, Inc., 10100 East Freeway, Suite 101, Houston, Texas 77029, applied to Customs for approval to gauge imported

petroleum and petroleum products and bulk liquid organic chemicals.

Customs has determined that the application is complete and acceptable. Therefore, under the provision of 151.13(c), Unimar, Inc., is conditionally approved to gauge imported petroleum and petroleum products and bulk liquid organic chemicals in all Customs districts.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories & Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2446).

Dated: May 26, 1988.

John B. O'Loughlin,

Director, Office of Laboratories & Scientific Services.

[FR Doc. 88–12461 Filed 6–2–88; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Tuesday, June 21, 1988, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Voice of America, 330 Independence Avenue, SW., Washington, DC 20547. The meeting will begin at 10 a.m. on June 21 and will continue through 4 p.m. Point of contact for the meeting is Cathy Haynes, telephone (202) 485–8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the procurement and testing of high frequency broadcasting antennas, the status of negotiations with other governments and major construction projects, and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to negotiations with other governments will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 USC 552b(c)(1)).

Date: May 25, 1988.

Charles Z. Wick,

Director.

[FR Doc. 8812449 Filed 6–2–88; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 27, 1988.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Trainee Interview Sheet.
3. VA Form 22–8662.
4. This form is used during the performance of compliance surveys at all non-college degree schools and training establishments where veterans and/or eligible persons are pursuing programs of education and training.
5. On occasion.
6. Individuals or households.
7. 7,500 responses.
8. 1,875 hours.
9. Not applicable.

[FR Doc. 88–12532 Filed 6–2–88; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Automated Data Processing Systems; Establishment

Under the Federal Advisory Committee Act (Pub. L. 92–463) and after consultation with the Administrator, General Services Administration, the Administrator of Veterans Affairs has determined that the establishment of the Advisory Committee on Automated Data Processing Systems is necessary and in the public interest.

The Committee is being established to review and render expert advisory opinions and make recommendations to the Administrator's staff concerning the operation, expansion and improvements of the VA's automated data processing systems. The Committee will be composed of a broad selection of outside experts noted for their roles in automated data processing and telecommunications technology and its application in health care, business, and the Federal sector.

Comments of interested persons concerning the establishment of the Committee or recommendations for membership may be submitted to David A. Cox, Associate Deputy Administrator for Management (004), Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC, 20420, phone (202) 233–5458.

Dated: May 24, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Associate Deputy Administrator for Public Affairs.

[FR Doc. 88–12533 Filed 6–2–88; 8:45 am]

BILLING CODE 8320–01–M

Career Development Committee; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Career Development Committee has been renewed for a two year period beginning May 13, 1988 through May 13, 1990.

Dated: May 19, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-12534 Filed 6-2-88; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Health Services Research and Development; Meetings

The Veterans Administration gives notice under Pub. L. 92-463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Service Research and Development will be held at the Hotel Union Square, 114 Powell Street, San Francisco, California, on June 27, 28 and 29, 1988. The meetings will convene at 8 a.m. on June 27 and 28 and adjourn at 5 p.m. The meeting on June 29, 1988 will begin at 1 p.m. and adjourn at 5 p.m. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Assistant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the June 27th session for approximately one hour to cover administrative matters and to discuss the general status of the program.

The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(b) of Pub. L. 92-463, as amended by Pub. L. 94-409, closing portions of these meetings is in accordance with 5 U.S.C. 552(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue, NW., Washington, DC, 20420, (phone: 202/233-5365) at least 5 days before the meeting.

Dated: May 24, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Associate Deputy Administrator for Public Affairs.

[FR Doc. 88-12535 Filed 6-2-88; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 442 of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC 20420, June 21 and 22, 1988. The sessions will begin at 9:00 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-233-2888) prior to June 16, 1988.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m. on June 22, 1988.

Dated: May 27, 1988.

By direction of the Administrator.

Donald R. Smith,

Director, News Service, Office of Public Affairs.

[FR Doc. 88-12536 Filed 6-2-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 107
Friday, June 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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, June 7, 1988, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Methylene Chloride Petition

The staff will brief the Commission on petition HP 85-1 from the Consumer Federation of America requesting that the Commission commence a proceeding under Section 2(q)(1)(B) of the Federal Hazardous Substances Act to ban products containing methylene chloride.

Closed to the Public

2. Enforcement Matter OS #3705

The Commission will consider issues related to enforcement matter OS #3705.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

May 31, 1988.

[FR Doc. 88-12637 Filed 6-1-88; 1:53 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 7, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,213-NR
The First National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma

Memorandum and resolution regarding an extension of time for compliance with that portion of Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which limits the exposure of insured domestic branches of foreign banks to borrowers in the country in which the foreign bank parent is chartered to 200 percent of the branch's required capital equivalency ledger account and 100 percent for all other countries.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendment to the Corporation's rules and regulations in the form of new Part 324, entitled "Agricultural Loan Loss Amortization," which amendment implements Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans.

Discussion re: Imposition of penalties for failure to file timely Reports of Condition and Income.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 31, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-12549 Filed 5-31-88; 5:06 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 7, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Central National Bank of New York, New York City (Manhattan), New York (5904) (Memo dated April 27, 1988)
Audit Report re:
Houston Consolidated Office, Cost Center—405 (Memo dated April 26, 1988)
Audit Report re:
LAMIS Audit Report (Memo dated May 11, 1988)

Discussion Agenda:

Application for Federal deposit insurance:

Entrust Bank, a proposed new bank to be located at 13810 Plank Road, Baker, Louisiana.

Memorandums regarding the Corporation's corporate activities.

Memorandum regarding proposed revisions to the Division of Liquidation's delegations of authority.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Memorandum regarding the Corporation's supervisory activities.

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 31, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–12550 Filed 5–31–88; 5:06 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 18654, May 24, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, May 31, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Government in the Sunshine consideration of a personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: May 31, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–12554 Filed 5–31–88; 5:07 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on May 27, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 6, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Policy proposals regarding a drug testing program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: May 31, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–12555 Filed 5–31–88; 5:07 pm]

BILLING CODE 6210–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: June 14–15, 1988.

PLACE: Embassy Suites Hotel, Crystal Ballroom A, 1881 Curtis Street, Denver, Colorado 80202.

STATUS:

June 14, 1988, 9:00 a.m.–10:00 a.m.—Closed
Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703
June 14, 1988, 10:00 a.m.–6:15 p.m.—Open
June 15, 1988, 9:00 a.m.–3:30 p.m.—Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of April 21, 1988 Minutes
Executive Director's Report
—FY 88 Third Quarter Program Report
—Administrative Report
Vice Chairman's Report
National Advisory Committee Presentation on Support for Minimum Equipment
Chief Officers of State Library Agency Report, Wayne Johnson, Wyoming
State Library Reports—
Wyoming, Wayne Johnson
Colorado, Nancy Bolt
Oklahoma, Robert Clark
1990 NCLIS Programs—Report and Discussion
Film on School Library Guidelines Teleconference
NCLIS Committee Reports
—Budget and Finance
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—Public Affairs
—White House Conference
Privatization of NTIS
FOIA Related Activities
Library Statistics Collection Program
Information Age Issues
Special Population Literacy Programs
NCLIS 1989 Meeting Sites
Information for Governance Program Report

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Daniel Carter, NCLIS Acting Executive Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036 (202) 254–3100.

Dated: May 31, 1988.

Jane McDuffie,

Staff Assistant.

[FR Doc. 88–12656 Filed 6–1–88; 2:41 pm]

BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 53, No. 107
Friday, June 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 THE INTERIOR

Bureau of Land Management

[AZ-020-08-4212-13;A-23254]

Realty Action; Exchange of Public Lands; Maricopa, Mohave, Pima and Santa Cruz Counties, AZ

Correction

In notice document 88-7478 beginning on page 11142 in the issue of Tuesday, April 5, 1988, make the following correction:

On page 11142, in the second column, the 13th line should read "Township 15 South, Range 14 East.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-38]

Revision of Transition Area; Jacksonville, TX

Correction

In rule document 88-11199 beginning on page 17919 in the issue of Thursday, May 19, 1988, make the following correction:

§ 71.181 [Corrected]

On page 17920, in the first column, in § 71.181, under **Jacksonville, TX**, in the seventh line, the longitude should read "95°12'55" W.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-63]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, and 212 Helicopters

Correction

In proposed rule document 88-7697 beginning on page 11678 in the issue of Friday, April 8, 1988, make the following corrections:

§ 39.13 [Corrected]

1. On page 11679, in the first column, in § 39.13, under **Bell Helicopter Textron, Inc. (BHTI)**, in the third paragraph, in the second line, "P/N 204-011-105-450" should read "P/N 204-011-450"; in the third line, remove "P/N"; remove the entire fourth line; and remove "rotor trunnion," from the fifth line.

2. On the same page, in the same column, in paragraph (a), the third line should read "for the main rotor mast, P/N 204-011-450 (all dash numbers), and main rotor trunnion, P/N 204-011-105-001,".

3. On the same page, in the same column, in paragraph (b), in the second line, "14,000" should read "14,900".

BILLING CODE 1505-01-D

Federal Register

Friday
June 3, 1988

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdictions; Interim Rule With Request for Comments

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdictions

AGENCY: Food and Nutrition Services, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule will amend the Food Distribution Program regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; and (3) revising provisions for the renewal of agreements. Those provisions relative to the processing of donated food which appeared on July 1, 1986 (51 FR 23719–24130) and July 2, 1987 (52 FR 24937–24978) in the **Federal Register** are included to provide for a complete version of the Food Distribution Program regulations.

DATES: Interim rule effective July 5, 1988, comments must be received on or before November 30, 1988. Comments are not being solicited on §§ 250.11(a), 250.15(c), 250.15(f)(1), 250.16(a)(4) (last sentence), 250.17(c), 250.17(b), 250.18(b), 250.18(c), 250.19(b)(2) and 250.30 and the definitions of "contract value of the donated foods," "Federal acceptance service," "multi-State processor," "refund application," "substituted food" and "substitution" as contained in § 250.3.

ADDRESS: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, Park Office Center, Alexandria, Virginia 22302.

Comments in response to this interim rule may be inspected at the address above during normal business hours (8:30 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Susan E. Proden, Chief, Program Administration Branch (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action 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 approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The OMB approval numbers are noted at the relevant point of the regulations.

The Department is issuing this rule as an interim rule rather than a final rule. The Department has already solicited and considered public comments concerning this rulemaking effort. In a typical rulemaking, the Department would now issue a final rule. However, because this rulemaking involves extensive modifications to program operations, the Department has determined that additional public comments would be beneficial. Therefore, we are issuing this rule as an interim rule in order to provide distributing agencies and recipient agencies with the opportunity to comment based on actual operating experience with the new regulations.

Since the provisions that pertain to processing were published in final on July 1, 1986 (51 FR 23719–24130) the Department is not soliciting comments on §§ 250.17(b), 250.17(c), 250.18(b), 250.18(c), 250.19(b)(2) and 250.30 and the definitions of "contract value of the donated foods," "Federal acceptance service," "multi-State processor," and "refund application" as contained in Section 250.3 of this rule. Similarly, since comments have already been solicited on the provisions concerning the substitution of concentrated skim milk for nonfat dry milk under State processing contracts which were published as an interim rule on July 2, 1987 (52 FR 24973–24978), no additional comments are being solicited on the last sentence of § 250.16(a)(4) and the definitions of "substituted food" and "substitution" as contained in § 250.3 of this rule. In addition, § 250.15(c) (claims), § 250.15(f)(1) (use of funds accruing from claims) and § 250.21 (civil rights) were reserved in the proposed rule. The current regulatory provisions concerning claims and use of funds accruing from claims have been inserted into this rule at these sections to provide a complete version of Food Distribution Program regulations. However, any changes to these two provisions will be addressed in a separate rulemaking. Since these provisions reflect the current regulation, no comments are being solicited on them at this time.

The civil rights section has been amended to provide cross references to the Departmental regulations on civil rights. Comments on this section and all other provisions of this rule will be considered in the development of final regulations.

The Department also wishes to point out that this rule does not reflect any of the changes required by the recently enacted Commodity Distribution Reform Act of 1987 (Pub. L. 100–237). The Department will be issuing regulations concerning this Act in the near future.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550 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 48 FR 29114 (June 24, 1983)).

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of the Food and Nutrition Service (FNS) and distributing agencies concerning the distribution and use of federally donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the child nutrition programs and nutrition programs for the elderly, charitable institutions, nonprofit summer camps for children, and certain low-income households and disaster organizations.

Analysis of Comments

On August 19, 1985, FNS published a proposed rule in the **Federal Register** (50 FR 33470) to amend the Food Distribution Regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; and (3) revising provisions for the renewal of agreements; and

strengthening provisions for the processing of donated foods.

In an effort to assist FNS in revising Part 250, comments were solicited on the proposed changes. The proposed revision encompassed nearly all provisions contained in Part 250. Comments were not solicited on the regulations regarding the National Commodity Processing Program, which were subsequently moved to 7 CFR Part 252 and three provisions, claims (§ 250.15(c)), use of funds accruing from claims (§ 250.15(f)(1)), and civil rights (§ 250.21) were reserved for further consideration and development prior to proposal.

The general public was given 90 days for comment on the proposed revision. A total of 305 comment letters was received from various sources such as distributing agencies, recipient agencies, processors, distributors of processed end products, the American School Food Service Association, the National Association of State Agencies for Food Distribution and the American Institute of Certified Public Accountants.

Restructuring

In an effort to simplify the organization of Part 250, the proposed rule set forth the provisions under one part with separate subparts for: (1) General, (2) General Operating Provisions, (3) Processing and Labeling of Donated Foods, and (4) Eligible Recipient Agencies and Programs. The restructuring was intended to provide greater ease in reading and understanding of the regulations and to eliminate the need for a significant amount of repetition. The commenters overwhelmingly supported the restructuring of the regulations, as proposed. Thus, the interim rule is issued in the same format as the proposed rule.

The exerpts of legislative provisions were deleted in the proposed rule. However, summaries of section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended; sections 6 and 14 of the National School Lunch Act, as amended; section 32 of Pub. L. 74–320, as amended; section 311 of the Older Americans Act of 1965, as amended; section 416 of the Agricultural Act of 1949, as amended; and section 709 of the Food and Agriculture Act of 1965, as amended; were included under definitions. These are the primary legislative provisions authorizing the purchase and donation of food items. A few commenters were concerned about the elimination of the legislative quotations. It is the Department's opinion that a lengthy list of the full text of these provisions is unnecessary since a summary of the primary provisions relative to the purchase and donation of food for distribution to eligible recipient agencies is being retained under the definitions section. FNS will, however, make available a summary of all legislative authorities upon request.

Definitions

"Distributing agency"—Although the Department has always considered indian tribal organizations (ITOs) to be inherent in the definition of a "distributing agency," the Department is concerned that confusion may result from the lack of specific reference. In order to clarify this matter, the interim rule definition specifically refers to ITOs. "Nonresidential Child Care Centers"—In § 250.3 of the proposed rule the term "nonresidential child care centers" included reference to child care centers, day care homes and sponsoring organizations. In the interim rule, reference is made to "institution" instead. This term more accurately describes the entities which participate in the Child Care Food Program. The proposed definition unnecessarily included day care homes, which can only participate under the auspices of a sponsoring organization and failed to include outside-school-hours care centers.

"School"—is amended by revising the definition to reflect recent changes to the term in the National School Lunch Program. The changes consist of clarifying the eligibility of preprimary classes for the National School Lunch Program, and clarifying that school means an education unit of high school grade or under which is recognized as part of the education system in the State.

"Tuition"—As a result of the elimination of tuition limitation by Pub. L. 100–71, the tuition limitation in the definition of "school" and the definition of "tuition" have been deleted.

"School food authority"—is amended to reflect changes to the definition in the National School Lunch Program regulations which were necessary to recognize special accommodations between public schools and private schools or residential child care institutions, when approved by FNS.

"Substituted food" and "Substitution"—are new or expanded terms that appeared in the interim concentrated skim milk substitution rule which was published July 2, 1987 at 52 FR 24973. These terms are included in this rule to provide a complete text. No comments are being taken on these definitions in this rulemaking.

Eligibility Determinations for Recipient Agencies and Recipients

Section 250.11 of the proposed rule required that distributing agencies determine the eligibility of all applicants, enter into agreements with those which were determined to be eligible and make donated foods available.

A total of twenty comments was received on this requirement. Ten commenters were opposed to the provision. They maintained that requiring the distributing agency to determine the eligibility of and make donated foods available to all eligible organizations which apply for participation in the Temporary Emergency Food Assistance Program (TEFAP) was not feasible due to the limited amounts of donated foods which are currently being provided. The Department did not intend for this provision to apply to TEFAP. Agreements between distributing agencies and emergency feeding organizations are governed by § 251.2 of this subchapter, not § 250.11.

Commenters also recommended that they be allowed to impose minimum size requirements on recipient agencies. That is, commenters said they should have the authority to reject applications from very small organizations since the cost of administering the program to such organizations could be very high compared to the amount of commodities to be received. The Department does not believe that it is appropriate for a distributing agency to reject any recipient agency by establishing a minimum number of persons which a recipient agency must serve in order to receive donated foods. Rather, the Department considers the recipient agency's past performance practices to be the only justification for denying participation. Thus, this provision is retained in Section 250.11 of the interim rule with the clarification that in determining recipient agency eligibility that the agency's past performance be a factor in the determination.

The Department published a new § 250.11 regarding the verification of recipient agency eligibility on June 30, 1986 (51 FR 23518). However, the terms "State distributing agency" and "State agency" were inadvertently used in this section rather than "distributing agency." Since the Part 250 regulations use the term "distributing agency," we are replacing the words "State distributing agency" and "agency" with "distributing agency" to maintain consistency. The provisions of the June 30, 1986 rule and the proposed § 250.11

have been redesignated as § 250.11 (a) and (b), respectively.

Agreements

Agreements with Department—Section 250.12(a) of the proposed rule required distributing agencies to enter into an agreement with the Department prior to the beginning of a distribution program. The agreement was to be completed by September 30 of each year and be effective for no longer than one year. The same requirement applies to State Agencies on Aging which receive any cash in lieu of commodities in connection with nutrition programs for the elderly.

A total of eight comments was received from distributing agencies regarding this provision. Five commenters opposed the requirement on the basis that the provision generated more paperwork and that the completion date conflicted with most school calendars.

Since agreements are currently required annually, the only change in the proposal was that agreements be completed by September 30. As noted in the preamble of the proposed rule, the September 30 requirement was added to make the term of these agreements coincide with the fiscal year, facilitating compliance with reporting requirements which are generally on a fiscal year basis. Therefore, § 250.12(a) of this interim rule retains the provision as proposed.

Distributing Agency Agreement—Section 250.12(b) of the proposed regulations required that the agreements between distributing agencies, subdistributing agencies, recipient agencies, warehouses, carriers, etc. be in writing and be effective for no longer than one year.

Forty-three comments were received on this proposal. Thirty one commenters indicated that the requirement for an annual agreement would be time consuming, substantially increase workload and paperwork, tax an already insufficient staff, and detract from operational flexibility. Distributing agencies administering more than one program indicated that they need the flexibility of writing one agreement to cover a variety of programs.

In response to the commenters concerns, § 250.12(b) of the interim rule has been modified to permit the one year agreements to be extended at the option of both parties, for two additional one-year periods. As a part of each extension, the party contracting with the distributing agency must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. In order to ensure program integrity in light of the three-year contract cycle, contracts must include a termination clause whereby either party may terminate the agreement for cause with 30 days notice.

The provision regarding two one-year extensions of contracts does not apply to existing contracts. It applies only to contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively. In the case of agreements with subdistributing agencies and recipient agencies, the two extension options will reduce paperwork and workload. In the case of agreements for warehouses, etc., the option for two one-year extensions will mean that the distributing agency will need to engage in procurement procedures for that contract only once every three years. The Department believes that this three-year bidding cycle will reduce paperwork and provide added stability with respect to the contracted services, while maintaining adequate assurances that the procurement is conducted in a manner that provides open and free competition.

Also a new sentence has been added to § 250.12(b) to clearly specify the distributing agencies' ongoing responsibility for ensuring program integrity at the subdistributing agency level, and below.

Food Service Management Company Agreement—Section 250.12(c) of the proposed regulations required that recipient agencies enter into written agreements with food service management companies and that the agreements be effective no longer than one year.

Nine comments were received on this proposal. Commenters were concerned that this requirement to limit the agreement to one year was inconsistent with the National School Lunch Program (NSLP) regulations with respect to the duration of food service management company contracts.

The Department did not intend to create inconsistencies with existing regulations concerning food service management companies. Instead, the objective was to ensure accountability when food service management companies use donated foods in the preparation of meals under their contracts with recipient agencies. In the case of food service management company agreements with recipient agencies which participate in the Child Nutrition Programs, this provision was intended only to add some requirements concerning the use of commodities and not to create an inconsistency concerning the length of contracts. Therefore, this interim rule has been revised to limit the provision concerning contract length to those recipient agencies which do not participate in the Child Nutrition Programs: nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly. In addition, the interim rule has been modified to permit the one-year agreements to be extended at the option of both parties, for two additional one-year periods. As a part of each extension, the recipient agency and food service management company must update all pertinent information and demonstrate that the full value of all donated foods received during the previous contract period have been accounted for. In order to ensure program integrity in light of the potential three-year contract cycle for charitable institutions, nutrition programs for the elderly and nonprofit summer camps for children, agreements with these recipient agencies must include a termination clause whereby either party may terminate the agreement for cause with 30 days notice. The provision regarding two one-year extensions of contracts does not apply to existing contracts with food service management companies. It applies only to food service management company contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively. Finally, a cross-reference to the review requirements in § 250.19(b) has been added.

Transfer of Donated Foods

Section 250.13(a)(1) of the proposed rule required that recipient agencies receive authorization from the distributing agency and the appropriate FNSRO prior to transferring donated foods which have been provided as part of an approved food package or authorized program level of assistance and continued to require distributing agency approval of all other transfers. In addition, the proposed rule required all transfers to be documented on the FNS–155 or FNS–152.

Eighty-six comments were received on this proposed requirement. Some commenters felt the provision was overly burdensome and costly. Other commenters felt that the dual authorization requirement could result in food spoilage before the transfer could be made. Commenters recommended among other things that: (1) FNSRO approval be required only for those transfers made to recipient agencies not originally authorized to receive that particular donated food; (2) approval not be required for transfers

made between like recipient agencies; (3) approval be based on the value of the donated food being transferred; and (4) documentation be made available during reviews in lieu of requiring advance approval.

Subsequent to the proposed rule, sections 1564(a) and 1561 of Pub. L. 99–198 (the Food Security Act of 1985) authorized the Secretary to use commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) in the Temporary Emergency Food Assistance Program and amended section 32 to permit the transfer of section 32 commodities among the agencies originally receiving those donated foods. On May 13, 1987 (52 FR 17928), the Department published a final rule amending both the Food Distribution and TEFAP regulations regarding the transfer of section 32 commodities. This rule permits the transfer of section 32 commodities from Part 250 recipient agencies to Part 251 emergency feeding organizations and vice versa. Such transfers must be approved by both the distributing agency and the State agency administering the TEFAP, and must be documented in a manner that provides an audit trail.

In light of the concerns raised by the commenters on this provision, the Department is revising § 250.13(a)(1) in this interim rule to allow for transfer of donated foods which have been provided as part of an approved food package or authorized program level of assistance between like recipient agencies (schools to schools) with prior approval by only the distributing agency. The Department believes that permitting transfers of this class of donated foods between like recipient agencies with only the distributing agency's approval will give the distributing agency flexibility in administering the program while ensuring that ineligible recipient agencies do not receive the donated foods. However, the transfer of donated foods which have been provided as part of an approved food package or authorized program level of assistance between unlike recipient agencies (schools to charitable institutions), must be approved by the appropriate FNSRO. This rule adopts the provision of the proposed rule that transfers of donated food which are provided *in addition* to the authorized program level of assistance may be transferred between recipient agencies with the prior authorization of the distributing agency alone.

The necessary authorization for the transfer of section 32 commodities will depend on whether the section 32 commodities have been provided as a part of the authorized program level of assistance. The transfer of section 32 commodities from recipient agencies to TEFAP emergency feeding organizations will continue to be governed by the requirements set forth in the May 31, 1987 rule and incorporated into this rule (prior authorization of the distributing agency and the TEFAP State agency and documentation sufficient to provide an audit trail).

It has also come to the Department's attention that there is some confusion regarding the conditions on the transfer of commodities by summer camps at the end of the camping session. While the Department anticipates that there would be no commodities remaining at the end of the camping session, it should be noted that should there be remaining commodities, these may be transferred to other recipient agencies with the approval of the distributing agency.

In an effort to reduce the paperwork burden which would result from the requirement of the proposed rule that all transfers be documented on FNS–155 or FNS–152, the interim regulation requires only that transfers be documented in any manner that provides an audit trail. Such documentation must be retained in accordance with the recordkeeping requirements of §§ 250.16 and 251.10(a).

In addition, section 1506 of Pub. L. 99–198 amended section 4(b) of the Food Stamp Act to eliminate the current ban on the distribution of Federally donated foods directly to households in jurisdictions that operate the Food Stamp Program. Accordingly, this prohibition has been deleted from § 250.13(a)(1) of this interim rule.

Storage Facilities

Standards—Section 250.14(a) of the proposed rule outlined general standards for storage facilities and required distributing agencies, subdistributing agencies and recipient agencies responsible for the contracting of storage facilities to ensure that warehouse facilities meet existing Federal, State or local health department standards, whichever were more stringent.

Fifty-seven comments were received on the proposed provision. Forty-six commenters opposed the provision on the basis that it would increase workload and cost. The majority of the commenters stated that it is not feasible to expect agencies to compare Federal, State and local health department standards to determine which particular standard is more stringent for every requirement associated with storage practices. Several commenters recommended that the Department develop minimum standards in lieu of referring to Federal, State or local standards.

It appears that these commenters have misinterpreted the Department's intent concerning this requirement. This requirement does not mean that the agency contracting for the storage must itself conduct inspections to insure compliance with applicable Federal, State or local health standards. Nor did the Department intend that the distributing, subdistributing, recipient agency or the Department develop their own standards regarding proper storage. The Department believes that existing Federal, State and local regulations of the health conditions of storage facilities should provide sufficient protection of the Department's donated foods. However, the Department wishes to ensure that these storage facilities have actually received any inspection and/or approvals required under existing laws and regulations. As a result, § 250.14(a) has been revised to emphasize that the responsibility of the agency contracting for the storage facility is to ensure that the storage facility has obtained all required inspections and/or approvals and that they are current. This can be accomplished by reviewing documentation provided to the storage facility by the Federal, State and/or local health departments or by contacting the regulatory agencies for confirmation.

Several commenters recommended that the requirement regarding the use of pallets be deleted. Since the size of some storage areas does in fact prevent the use of pallets, § 250.14(a) of this rule requires that donated foods be stored off the floor in a manner that provides for adequate ventilation.

Reviews—Section 250.14(b) of the proposed rule required that distributing agencies ensure that an on-site review of the storage facilities be conducted prior to entering into or renewing a contract for the storage, handling and distribution of foods.

Forty comments were received concerning this requirement. Thirty-five of the commenters recommended that the requirement be revised or deleted because commenters felt there were insufficient staff and/or funds to conduct the reviews. Several of the commenters recommended that the review be conducted during the contract period as part of the management evaluation review and that the Department clarify that subdistributing agencies and recipient agencies are responsible for reviews of their respective storage facilities.

The Department believes that the review of storage facilities is essential for accountability. Distributing agencies can prevent claims by ensuring that storage facilities adhere to program regulations. Furthermore, the Department believes that oversight review of storage facilities is important, because improper storage is the primary cause of food loss claims. Clearly, it is essential that commodities be stored in a safe environment. Consequently, § 250.14(b) of this interim rule requires that all distributing agency level storage facilities be reviewed annually. In addition, distributing agencies must ensure that subdistributing and recipient agencies conduct annual reviews of their respective storage facilities. Documentation that will reflect compliance as well as documentation of corrective action taken in cases of noncompliance must be maintained on file at the distributing agency or local level as appropriate.

Contracts—Section 250.14(c) of the proposed rule required that distributing agencies, subdistributing agencies and recipient agencies enter into annual written contracts for the leasing of storage facilities.

Eighty-four comments were received on this proposal. Seventy commenters recommended that the requirement be deleted or revised. Several of the commenters expressed concern about the adverse effects such a requirement would have. For example, commenters indicated that: (1) Substantial savings are realized when contracts are entered into for longer periods of time; (2) in instances when contracts are entered into through the competitive bidding process, States would not only be required to go through this process every year but the requirement could also necessitate annual transfers between storage facilities; (3) this would eliminate free storage and adversely affect temporary or short-term storage.

The Department believes that a written contract is essential to clearly establish the liability between the two parties involved. Without such a contract, establishing claims when losses occur can be problematic. Therefore, this interim rule provides for an annual contract. In recognition of the benefits of a longer contract cycle, the interim rule has been modified to permit the one-year agreements to be extended at the option of both parties, for two addtional one-year periods. As a part of each extension, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for.

The provision regarding two one-year extensions of contracts does not apply to existing contracts with storage facilities. It applies only to storage facility contracts signed after the effective date of this rule. It is generally the policy of the Department not to apply a rule retroactively.

In addition, the Department is limiting to distributing agencies and subdistributing agencies the requirements in § 250.14(d) that storage facility contracts be in writing and be subject to a maximum three year bidding cycle. A corresponding change has been made to § 250.12(d). Recipient agencies have been exempted from this requirement because of the heavy paperwork burden involved in such a requirement, particularly in light of the typically small amount of commodities stored by recipient agencies. As pointed out by the commenters, these requirements could adversely affect the ability of recipient agencies to find temporary or short-term storage. The Department also agrees with the commenters' concern that the contract requirements might limit the availability of low-cost or free storage arrangements sometimes offered as a service to schools or other recipient agencies. For these reasons, the requirement for a written storage contract subject to a three-year bidding cycle has been limited to distributing agency and subdistributing agency storage contracts. However, there is nothing to prohibit the distributing agency from requiring recipient agencies to have a written contract.

With respect to the assurances the contract must contain, the interim rule requires (1) annual rather than semi-annual inventories as proposed (2) reconciliation of the annual physical inventory with the inventory records, and (3) termination of the contract for cause by either party upon 30 days notice, rather than for any reason and with 60 days notice as proposed. The changes involving the inventories are discussed in the next section. The Department believes that the changes in the time for notice prior to the termination and the reasons therefore is necessary in light of the potential three year periods which will be permitted between bidding for contracts.

Physical Inventory—Accountability and monitoring of donated foods are two areas that have been under close scrutiny as a result of nationwide audits conducted both by the Department's Office of Inspector General (OIG) and the General Accounting Office (GAO). OIG found that the system presently in use is inefficient for monitoring levels of donated foods.

To ensure stricter inventory controls and accountability of donated foods, § 250.14(d) of the proposed rule required distributing agencies, subdistributing agencies, and recipient agencies to conduct semi-annual physical inventories of all storage facilities being used for the handling, storage and distribution of donated foods by June 30 and December 30 of each year. The physical inventory information was to be submitted to the appropriate FNSRO as part of the monthly inventory report for the months of June and December.

Eighty-five comments were received regarding this proposed requirement. Seventy-five of the commenters expressed concern that the requirement would increase costs and that there were insufficient staff to conduct such inventories. Commenters made the following recommendations: (1) Delete the semi-annual physical inventory requirement; (2) conduct physical inventories annually; (3) limit inventories to facilities owned or used by distributing agencies and recipient agencies; (4) limit inventories to distributing agency contracted facilities; or (5) review inventories during management evaluation reviews.

In recognition of the points raised by commenters while taking into consideration the concerns of the Office of the Inspector General (OIG) and recommendations of the General Accounting Office (GAO), § 250.14(d) of this interim rule requires that during the annual review required by § 250.14(b) a physical inventory be taken of the storage facility and reconciled with the storage facility's inventory records and that the reconciliation be kept on file by the agency which contracted with or maintained the storage facility. While a perpetual inventory is not specifically required by this rule, in the Department's view a daily accounting of the usage of each donated food is an essential part of good management practice. A perpetual inventory record should show: (1) Dates of all transactions; (2) quantities withdrawn; and (3) balance of food in storage. The physical inventory will then serve as a check on the accuracy of the inventory records. Any major differences in the two inventories, however, must be investigated thoroughly. Corrective action must be taken immediately and reported to the distributing agency. Since this rule requires that the physical inventory information be maintained on file, § 250.17(b) which required submission of this information to the

FNSRO, has been deleted in this interim rule.

Excessive inventories—Section 250.14(e) of the proposed rule limited the inventory level of distributing agencies, subdistributing agencies and recipient agencies to a six month supply, unless a justification for a higher level was approved.

A total of eighty comments was received on this provision. Seventy-four commenters recommended that the provision be deleted or revised for the following reasons: (1) Some products are offered only once a year; and (2) the Department's policy for shipping only truckload lots gives some States a year's allotment at one time. However, several commenters endorsed the requirement, as proposed.

The provision limiting the inventory level to a six-month supply, unless justification for a higher level is approved, is retained in § 250.14(e) of this interim rule. Audits by OIG and GAO have disclosed major problems associated with excessive inventory levels. The reports indicated that excessive inventories resulted in increased storage costs, greater potential for infestation and spoilage and difficulty in effectively using the product. In addition, in instances when a food item may be offered only once, the limited supply of a food item is sufficient justification for either the distributing agency or FNSRO to approve a higher inventory level. Also, the Department is trying to eliminate inconsistencies in the commodity program whenever possible. Retaining the six-month inventory level provision will make the Food Distribution Program consistent with the current inventory limitations on processors participating under the National Commodity Processing System and State processing contracts.

Financial Management

Section 813 of Pub. L. 100–77 extended the date for prohibiting the assessment of fees for the intrastate cost of storage and transportation under Part 251 of this chapter through September 30, 1988. Accordingly, this nondiscretionary requirement has been included in § 250.15(a)(2) of this interim rule.

Claims for Improper Distribution, Loss of, or Damage to Donated Foods and Use of Funds Accruing from Claims

Section 250.6(m) of the current regulations requires the distributing agencies to pursue claims arising in their favor immediately upon receipt of information regarding commodity loss, damage, or improper distribution. Certain exemptions from claims actions are provided for in instances of minimal inventory shortages or losses. Section 250.6(k) of the current regulations contains provisions concerning the use of funds accruing from claims, as well as the use of funds accruing from other aspects of program operations. At the time the overall revisions to Part 250 were proposed, a determination was made that further consideration should be given to the procedures for pursuing claims and the use of funds accrued as a result of such claims action. Thus, §§ 250.15(c) and (f)(1) were reserved in the proposed rule. Because a proposed rule soliciting comments on these procedures has not been published, the provisions specified in § 250.6(m) and (k) of the current rule have been incorporated into this interim rule. Since these provisions are merely being incorporated from the current regulations, no comments are being solicited at this time. The Department intends to publish a proposed rule addressing these provisions at a later date.

Use of Program Funds

Allowable Administrative Expenses—Section 250.15(f)(2) of the proposed rule listed some examples of unallowable expenses and also referenced the Office of Management and Budget (OMB) Circular A–87, which outlines in more detail the expenditures for which program funds cannot be used. Since this circular describes allowable expenses the Department did not believe it was necessary to repeat the entire listing in the proposed rule.

A total of nine comments was received on this provision. The majority of commenters were in favor of the provision. Some commenters recommended that OMB Circular A–122 also be included since distributing agencies have contracts with private nonprofit organizations.

Although the proposed rule referenced OMB Circular A–87, the Department recognizes that it is more appropriate to reference the portion of the Department's Uniform Federal Assistance regulations, 7 CFR Part 3015, Subpart T, which implements the OMB Circulars concerning Cost Principles, including A–87 and A–122. Therefore, this interim rule references 7 CFR Part 3015, Subpart T rather than the circulars. This provision has also been redrafted to make clear that the list of unallowable costs is not exhaustive.

Excess Funds—There are two ways which funds can accrue to distributing agencies as a result of program operations: (1) Through the collection of distribution charges; and (2) through the sale of containers, salvage of donated foods, insurance collection or recoveries from loss or damage claims. Currently the regulations specifically spell out the uses of these two categories of funds. Distributing agencies are required to review at least once each fiscal year the receipt and expenditure of funds to ensure that fund balances are not in excess of program needs. If funds are found to be excessive, the distributing agency is required to reduce such funds. If excess funds accumulate as a result of collection of distribution charges, such excess funds should be used to reduce such charges or be returned to the contributor. If excess funds accrue from the sale of containers, salvage of donated foods, insurance or other recoveries from loss or damage claims, such funds shall be used to reduce distribution charges, purchase additional foods or be paid to the Department.

Section 250.15(f)(3) of the proposed regulations provided precise guidelines for determining what constitutes "excess funds". Since distributing agencies use these funds for different purposes, no specific dollar limit was proposed. The term "excess funds" was defined as funds exceeding the previous three month's expenditures. The total expenditures for the previous three months is the "maximum" amount of funds which the distributing agency may have in its account. Funds which exceed this amount were considered in excess of program needs unless the distributing agencies provided justification of the need for such funds and the justification was approved by FNSRO. In some instances, the FNSRO may have considered funds equal to or less than the expenditures for the previous three months to be in excess of what was needed. In such instances the distributing agency was required to reduce such funds. Expenditures of a nonrecurring nature were not included in the determination of total expenditures for the previous three months.

A total of forty-four comments was received on the proposed definition. Three commenters were in favor of the definition of excess funds, while forty-one commenters were opposed. Generally, commenters contended that basing the definition on the previous three months' expenditures might be too restrictive. Commenters provided a wide range of timeframes on which to base this definition. The main concern was that distributing agencies must have enough funds to conduct normal business during the months of high expenditures and low revenues.

In order to provide distributing agencies with more flexibility,

§ 250.15(f)(3) of the interim rule defines excess funds differently depending on the source of the funds. As stated above, there are several ways distributing agencies can accrue funds; through the collection of distribution charges and through the sale of containers, salvage of donated foods, insurance collection or recoveries from loss or damage claims. Since the allowable uses of the funds depends on the source of the funds, in this interim rule distributing agencies are required to maintain separate accounts for the two types of funds: an operating account based on distribution charges and a salvage account based on the sale of containers, salvage and claims, etc. At a maximum, the operating account funds shall not exceed the sum of the previous year's highest three-month expenditures. Funds exceeding this maximum shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. The FNSRO may determine that funds equal to or less than the expenditures for the previous year's highest three months are in excess of what is needed. In such instances, the distributing agency shall also reduce such funds. As required in the proposed rule, if excess funds accumulate by reason of collection of distribution charges, such funds shall be used to reduce such changes or shall be returned to the contributor.

The salvage account fund will normally have irregular deposits and irregular expenses. Since nonrecurring unbudgeted expenditures will be made out of the salvage account, the interim rule sets no limit on this account. FNSRO must, however, give prior approval to each deposit or expenditure which is in excess of $2,500. Since the interim rule does not set a limit on the amount of funds which can accrue from the sale of containers, salvage of donated foods, insurance collection, or recoveries of claims for the loss or damage of donated foods, the portion of the proposed rule concerning the use of excess funds of this type has been deleted. The use of the salvage account funds is governed by paragraph (f)(1) and (f)(2).

Maintenance of records

The proposal in § 250.16(a)(4) required processors or other entities which contract with a distributing agency, subdistributing agency or recipient agency to keep records. While the Department considers food service management companies and warehouses to fall in the category of "other entities", to avoid confusion the interim rule has been amended to specifically name these two groups.

Distributing agency-sponsored audits. Section 250.18(b) of the proposed rule required each distributing agency to provide for audits of all food distribution program operations that include examination of records pertaining to donated food acquisition, storage, distribution, processing activities within the State (except for that of multi-State processors) and financial information.

Fifty-three comments were received on this requirement. Fifty-one commenters opposed the provision. The majority of the commenters were concerned that the cost outweighed the benefits and that the audits served no useful purpose since they were mainly fiscal in nature. Most commenters recommended that the requirement be deleted.

In response to the comments received, this interim rule eliminates the distributing agency-sponsored audit provision. The Department has determined that strengthening the review requirements (§ 250.19(b)), which focus on program operations, is a much more effective means of ensuring appropriate oversight of program administration. Fiscal matters will continue to be reviewed in audits conducted under the Single Audit Act.

Reviews

The current regulations contain minimal monitoring provisions applicable only to distributing agencies and State Agencies on Aging. Section 250.19 of the proposed rule strengthened the monitoring provisions to ensure increased accountability.

Section 250.19(b) of the proposal required to FNS to establish evaluation procedures to determine whether distributing agencies have carried out the provisions of this Part and FNS guidelines and instructions. Since this requirement involves internal departmental procedures, rather than the review requirements for distributing agencies, it has been removed from this interim rule. The Department will, however, be providing further assistance and guidance to distributing agencies to ensure that the procedures established for reviews will encompass all operations covered by this Part. As a result of the deletion of this requirement, proposed § 250.19(c) and (d) have been redesignated in the interim rule as § 250.19(b) and (c), respectively.

Section 250.19(c) of the proposed rule required annual reviews by the distributing agency of all distributing agency level storage facilities, all processors (other than multi-State processors), and most food service management companies; the proposed rule also required periodic reviews of recipient agencies that received donated food but were not subject to reviews under the other FNS program regulations. Thus, the distributing agency would review charitable institutions, nonprofit summer camps for children, and nutrition programs for the elderly. Because of variances within States, the proposed rule did not establish minimum review frequencies for these recipient agencies but specifically requested that commenters make recommendations about the frequency of reviews required for adequate coverage.

Forty-five comment letters were received on the requirement for a formal State monitoring system, and all but three expressed opposition to one or more provisions. The most frequent objection was that the added responsibilities for distributing agencies would increase costs for activities for which no Federal administrative funds are provided. Nevertheless, twenty-eight commenters saw the need for some degree of periodic monitoring of recipient agencies. However, none recommended that more than 50 percent of the outlets in any category be reviewed each year. Of the seventeen comment letters expressing views on the frequency of onsite visits to recipient agencies, nine recommended that charitable institutions, nutrition programs for the elderly and summer camps all be placed on a 4-year review cycle for the Food Distribution Program similar to that required for the Assessment Improvement and Monitoring System (AIMS) under the regulations for the National School Lunch Program (7 CFR Part 210). Alternate recommendations were that reviews of these recipient agencies be conducted every 2 years, 3 years or 5 years.

Based on the commenters' recommendations and the Department's experience with reviews for other programs, § 250.19(b) of the interim rule establishes a 4-year cycle for review of charitable institutions, nonprofit summer camps and nutrition programs for the elderly with annual on-site visits required for not less than 25 percent each year. The 25 percent of the recipient agencies chosen to be reviewed each year must result in all recipient agencies being reviewed once every four years. The interim rule also clarifies the scope of these reviews. Sections 250.19(b)(1)(i) and (iv) require reviews to include on-site reviews of storage facilities used by these recipient

agencies and a review of all contracts between the recipient agency and food service management companies.

Several commenters were concerned about the emission from the proposed rule of a monitoring requirement for Child Nutrition Program outlets. These commenters pointed out that, while program regulations under Part 210, 225, and 226 require periodic reviews of schools and institutions receiving commodities, there is no requirement to review the commodity activities of those recipient agencies. Such a review should include an examination of ordering, storage, use and accountability procedures. The commenters recommended that these outlets be required to be reviewed periodically by distributing agencies.

The Department recognizes this concern and upon re-evaluation may decide to require that these Child Nutrition Programs be reviewed. However, since the proposed rule omitted such requirements, the Department will address this matter in a proposed rule or other means to ensure that these outlets are monitored.

The provision of § 250.19(c)(1) of the proposed rule required an annual review of all food service management companies except those contracting with schools. Because of commenters' concerns, the final rule requires a biennial review.

The interim rule retains the requirement for an annual review of all distributing agency level storage facilities as also reflected in § 250.14(b). The interim rule also clarifies that these reviews must be conducted on-site. As required by § 250.14(b), the distributing agency shall ensure that local-level storage facilities are reviewed by appropriate recipient agency personnel.

Section 250.19(b) also requires distributing agencies to conduct review of single State processors once every two years rather than annually as proposed. The Department determined that the frequency of once every two years will provide sufficient control based on reconsideration of the value of commodities going to the processors. If, in the performance of its review functions the distributing agency discovers deficiencies or potential problems, corrective action should be taken to eliminate the deficiency immediately.

Nondiscrimination—Section 250.21 of the proposed rule was reserved for the program's nondiscrimination provisions. The Department determined that further consideration be given to developing expanded provisions on prohibitions against discrimination on the grounds of age, sex, or handicap as required by Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Upon reconsideration the Department has determined that there is no need to publish a separate Food Distribution Program rule covering these prohibitions since there are Department-wide regulations (7 CFR Parts 15, 15a and 15b) already in place that are binding on all programs. Therefore, § 250.21 of this interim rule states the applicable prohibitions against discrimination on the grounds of age, sex, handicap, race, color or national origin and provides reference to the Department's regulations and instructions concerning civil rights.

State Processing of Donated Foods

As discussed above in the Supplementary Information section, the Department published in the **Federal Register** two regulations concerning State processing of donated food. Since comments have already been taken on these rules, the Department is not accepting any further comments pursuant to this rulemaking. These provisions are only included to provide a complete version of the Food Distribution Program regulations for reference purposes.

Nonprofit Summer Camps for Children

Section 1562 of Pub. L. 99–198 amended section 4(b) of the Agriculture and Consumer Protection Act of 1973 to change the age limit of children from "under 18" to "18 years of age and under". Accordingly, this nondiscretionary requirement has been included in § 250.40(a)(2) of the interim rule. This change in law is also reflected in a change in the definition of adults from persons 18 years of age and over to persons 19 years of age and over.

Section 250.40(a)(1)(xi) of the proposed rule required that the agreement between the camp and distributing agency include an assurance that excess commodity inventory be returned to the distributing agency. A total of eight comments were received and all of the commenters opposed the provision. Commenters suggested that remaining inventories be redonated at the distributing agency to other recipient agencies at the end of the camping session. Commenters also suggested that foods be transferred per instructions of the distribution agency.

Section 250.40(a)(3) as proposed required distributing agencies to transfer all donated foods remaining in summer camps at the end of the camping session to other recipient agencies. The Department notes, however, that some confusion may have resulted from the use of the terms "transfer" and "redonate." Section 250.13 uses the term transfer when commodities are moved from one recipient agency to another within a State and redonate when a distributing agency is unable to use the commodities and requests the FNSRO to move them to another distributing agency. To be consistent with this usage, § 250.40(a)(1)(xi) has been revised to require summer camps, at the distributing agency's option, to transfer any remaining commodities in accordance with § 250.13(a) or to return them to the distributing agency for redonation. A parallel change has been made to § 250.40(a)(3), including cross references to the transfer and redonation provisions in § 250.13.

In addition, § 250.40(a)(1)(x) has been changed to require assurance that a reconciliation of the physical inventory will be conducted at the end of the camping session. This change is necessary to be consistent with the annual reconciliation requirement of § 250.14(d).

Charitable Institutions

Under section 416 of the Agricultural Act of 1949, as amended, charitable institutions are eligible to receive commodities to the extent that they serve needy persons.

Section 250.41 of the proposed rule established a uniform means of determining the needy population of charitable institutions. In order to eliminate the varying and often unreliable methods for determining the number of needy persons served by a charitable institution, the proposed regulations required the distributing agency to determine the number of needy persons by: (1) Determining the percentage of subsidized income by dividing the subsidized income by total subsidized and nonsubsidized income; and (2) multiplying that percentage by the average daily number of participants. For the purpose of this section "subsidized income" was defined as income from public tax funds which is provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax-exempt contributions which provide for the care of participants the institution has determined to be in need of financial assistance. "Nonsubsidized income" was defined as all other income,

including payments made by institutional participants for services received and payments made on behalf of participants by persons legally responsible for their support. At a minimum, any time the number of participants in an institution or the amount of income increased or decreased by ten percent, the institution was required to notify the distributing agency. The distributing agency was then to revise financial and participation data to reflect such changes.

A total of thirty-two comments were received on the minimum requirement for reporting changes in the population or income of an institution. A few commenters recommended that hospital and nursing home caseloads be determined by Medicaid patient count as an alternative to the percent of subsidized income method. Twenty-eight commenters opposed the provision on the basis that it was unrealistic, unmanageable, too time consuming and that it would increase cost, paperwork and workload.

In response to commenters' concerns, the Department has decided to permit an alternative method to determine the needy population of charitable institutions. This alternative method allows institutions to count the number of people receiving benefits under a means-tested program. For example, if an institution had 100 patients and 10 of those patients were receiving benefits under a means-tested program, i.e. Medicaid, then that number will be the basis for determining the amount of donated foods that institution will receive. Thus, the interim rule requires distributing agencies to determine the number of needy persons being served in a charitable institution by using the subsidized income formula or by counting the number of needy persons receiving benefits under another means-tested program.

The Department is also eliminating the requirement for reporting ten percent changes in the population or income. The income and average daily participation figures reflected in the agreement shall be used in determining the number of needy persons being served by the institution in accordance with the above formulas. These figures will be based on the institution's financial and participation data for the previous year.

Section 250.41 of the proposed rule also required that the agreement include assurance that the tax exempt status be maintained. Upon reconsideration the Department has decided to delete this provision since verification of tax exempt status is included in the updated information the distributing agency obtains from the charitable institution each year.

In addition, the definition of "charitable institution" in Section 250.3 of the proposed rule required that a charitable institution not only be nonprofit, but also operate a nonprofit meal service. A total of thirty-four comments was received. Four commenters agreed with the provision while thirty commenters objected for reasons such as the increased administrative burden associated with the review of an organization's financial records which would have to be done in order to determine if the meal service is nonprofit. Based on the commenters' concerns, the Department has re-evaluated its position on this provision and has deleted the nonprofit meal service language from the definition and deleted the definition of "nonprofit meal service".

Some commenters recommended that Veteran Administration (VA) hospitals and post-secondary schools be included in the definition of charitable institutions. Since donated foods are provided by the Commodity Credit Corporation directly to the VA hospitals, these hospitals are not included in the definition. The Department has no legislative authority to provide commodities to post-secondary schools.

Correctional Institutions—There is no specific legislative authority for USDA food donations to nonfederal, adult correctional institutions. However, the Department has determined that institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions" within the intent of section 416 of the Agricultural Act of 1949, as amended. In order to distinguish between eligible correctional institutions and ineligible penal institutions, Section 250.41(a)(2) of the proposed rule adopted the eligibility criteria for adult correctional institutions to receive food donations as contained in FNS Instruction 706-3. In order to receive donated foods, adult correctional facilities must conduct rehabilitation programs which are (1) available to a majority of inmates and (2) of sufficient scope to permit participation (for a minimum of 10 hours per week per inmate) by either a majority of the total inmate population or a majority of sentenced inmates.

A total of six comments was received on this requirement. Four commenters opposed the provision, suggesting that the ten hour per week rehabilitative program be eliminated.

As stated in the program rule, in the absence of express legislative authority for USDA food donations to nonfederal adult correctional institutions, the Department determined that such institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions". The Department believes that this is consistent with the requirements of section 416 of the Agriculture Act of 1949, as amended. Thus, § 250.41(a)(2) is retained as proposed.

Nutrition Program for the Elderly

The first sentence in § 250.42(a) of the proposed rule stated that distributing agencies shall enter into an agreement with the State Agency on Aging responsible for administering programs funded under Titles III or VI of the Older Americans Act of 1965 in accordance with § 250.12(b) unless the State Agency on Aging has elected to receive all cash in lieu of donated foods. As commenters pointed out, the election of cash in lieu does not prevent the State Agency on Aging from obtaining certain commodities in addition to the cash in lieu of the per meal rate of donated food. Therefore, this sentence has been deleted.

In addition, § 250.42 of the proposed regulations specified that no adjustments in commodity allocations would be made on the basis of meal reports or estimates received after the close of the third Federal fiscal quarter of the year to which they pertain. Only two comments were received on this provision; one in favor and one opposed. The Department is retaining the provision as proposed so as to avoid overallocation or underallocation of food.

Finally, § 250.42(b) has been amended to reflect the change to the authorized level of assistance made by section 122(c) of Pub. L. 100-175 (enacted on November 29, 1987).

Emergency Food Assistance

Disaster Assistance—Section 250.43 and 250.44 of the proposed rule clarified the responsibilities of the distributing agency and disaster organizations in the use of donated foods during a major disaster, emergency or other situations of distress.

Section 250.43 of the proposed rule described the procedures for obtaining donated foods in instances when the Secretary has determined that a major disaster or emergency exists. The section also revised the procedures set forth in FNS Instruction 708-2 regarding household distribution of commodities on Indian reservations in cases of a major disaster or emergency. Under the instruction, Indian tribal organizations could receive donated foods for household distribution in any instance

of major disaster or emergency, without meeting some of the requirements for disaster assistance in other areas in which the Food Stamp Program is in operation. Under § 250.43(c) of the proposed rule, Indian tribal organizations would have to meet the same criteria as those set forth for other jurisdictions where the Food Stamp Program is in operation before receiving donated foods for household distribution.

A total of nine comments were received. The commenters opposed various provisions in the section regarding the distribution of commodities during disaster and emergency situations. Commenters felt that it was time consuming to fill out applications especially in an emergency and it was not efficient for States to wait for approval from the Secretary in order to meet specific needs. Commenters also felt that in an emergency all displaced persons should be considered in need regardless of income or social status.

Section 250.43 has been revised in the interim rule to make clear that it is the President who declares major disasters and emergencies pursuant to the Disaster Relief Act of 1974, but it is the Secretary who determines that, as a result of the major disaster or emergency, the type of assistance in the form of donated foods that is necessary. In addition, the interim rule provides that disaster assistance may continue as long as the Secretary deems necessary, rather than only for the duration of the major disaster or emergency. This change parallels the language of section 409 of the Disaster Relief Act.

Finally, the Department has decided to retain the limitation on the household distribution of donated foods in areas where the Food Stamp Program is in operation. The proposed rule permitted the distribution of donated foods to households in areas served by the Food Stamp Program only so long as the Secretary finds that the commercial channels of trade have been disrupted. This limitation originated from a former provision of section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)) which permitted the distribution of commodities to households in areas in which the Food Stamp Program was in operation only on a temporary basis under programs authorized by law to meet disaster relief need. This limitation, together with the provision of section 5(h) of the Food Stamp Act of 1977 (7 U.S.C. 2014(h)), which permits the distribution of food stamps to disaster victims only after the normal channels or trade have been disrupted and then resumed, gave rise to the policy contained in the proposed rule.

As noted earlier in the preamble, the general prohibition on household distribution of donated food has been deleted from section 4(b) of the Food Stamp Act of 1977. However, the Department believes that it is duplicative to permit the continuation of the household distribution of donated food once emergency food stamps become available. Therefore, the limitation on the distribution of commodities for household use to the period in which normal channels of trade are disrupted is being retained in § 250.43(a) of this interim rule.

With respect to the commenters' concern that delays would result from the need to obtain approval by the Secretary prior to commencing household distribution of commodities, the Department wishes to point out that § 250.43(c) required only the prior approval of the FNSRO. The Department believes that any delay would be insignificant and that the advance approval is necessary to ensure accountability.

Section 250.43(b)(2) of the interim rule has also been amended to clarify the authority of the distributing agency to use donated foods from any sources within the State in a disaster. The Department believes that it is imperative that distributing agencies have the right to use donated foods so that they can coordinate and direct all intrastate donation of food during a disaster.

Situations of Distress—Section 250.44 described the procedures for obtaining donated foods in situations of distress in which the need for food assistance cannot be met under other provisions of Part 250. Donations under this section may only be made for special group food assistance.

Section 250.44 of the proposed rule expanded the current regulations to clarify the responsibilities of the distributing agency in the use of donated foods during situations of distress. In addition, a limit was placed on the distribution period to no longer than 30 days and required that the donated foods is provided only to groups which are composed predominantly of needy persons.

Six comments were received on this provision. The majority of the commenters misunderstood the provision believing that if referred to disasters. One commenter recommended that the current language be retained.

The Department has reevaluated its position on this provision because in situations of distress, it is extremely difficult to determine who is needy and to determine how long the situation will last. In reviewing the proposed language on situations of distress, the Department determined that it was unclear what situations were "distress situations" and which would be considered "disasters." Revisions (as previously noted) have been made to the sections on disaster assistance to make those disaster provisions more explicit. In the case of situations of "distress", the Department feels that the language in the current rule more clearly depicts the difference between a disaster and situations of distress. Finally, the proposed rule limited the duration of food assistance in a distress situation to no more than 30 days. The Department, however, believes that such a restriction is unnecessary since the Secretary has the authority to determine the duration of the food assistance provided. Therefore, Section 250.44 is being revised to contain the provisions appearing in Section 250.10 of the current rule.

Food Distribution Program on Indian Reservations

The Department proposed in § 250.47(a) that distributing agencies which operate a food distribution program on an Indian reservation comply with § 250.30 regarding State processing of donated food. This section was inadvertently included in the proposal. Compliance with § 250.30 has been removed from this interim rule since distributing agencies for Indian reservations receive only approved food packages for distribution to households. Paragraph (a) has also been revised to clarify that if there is a conflict between the cited Part 250 section and Parts 253 and 254 that the Parts 253 and 254 will take precedence.

Paragraph (b) of this interim rule includes a reference to Part 254 Food Distribution Program for Indian Households in Oklahoma. Reference to Part 254 was inadvertently omitted in the proposal. However, since this part also sets the conditions for Food Distribution Program administration by eligible Oklahoma tribes, reference to Part 254 is included in this interim rule.

School Food Authorities

All references to schools in § 250.48 of the interim rule have been changed to school food authorities. This is being done to clarify the rule because school food authorities, not schools, are the ones that sign agreements with the distributing agency and which administer the program at the school level.

Proposed paragraph (b)(1) *Quantities* required the distributing agency to

develop a system to update and review caseload information by June 30 and December 30. The provision has been changed to require that an estimate of the average daily number of meals be submitted as early as practicable each school year but not later than September 1. This change merely incorporates the requirement as provided in 7 CFR 210.19(b).

Offer and Acceptance System—Section 250.48(e)(2) of the proposed rule prohibited the refusal of donated foods in instances when an offer-and-acceptance system is being maintained. Use of the offer-and-acceptance system permits school food authorities to order only the amounts and varieties of donated foods they desire for the school lunch program on the basis of advance notification by the distributing agency. Thus, the refusal provision is not warranted in instances when an offer-and-acceptance system is being maintained.

A total of fifteen comments was received on this provision. Nine commenters opposed the requirement and indicated that a refusal clause is needed to help discourage waste. Other commenters expressed concern that the requirement would result in increased storage costs.

The interim rule retains this provision as proposed. The Department believes that if the offer-and-acceptance system is utilized correctly that schools will not need the 20 percent refusal provision.

Nonresidential Childcare Institutions

Section 250.49(b) of the proposed rule required the distributing agency to develop a system to update and review caseload information by June 30 and December 30 of each year. The provision has been revised in this interim rule to require that an estimate of the average daily number of meals be submitted by the State agency to the distributing agency by June 1 of each year. This change is necessary to maintain consistency with the requirement for reporting the average daily number of meals as contained in 7 CFR 226.6(g).

Service Institutions

Section 250.50(b) of the proposed rule required that service institutions submit the most recent written caseload information by April 30 of each year. This date has been changed in the interim rule to June 1 to incorporate the requirement as provided in 7 CFR 225.5(b).

Special Supplemental Food Program for Women, Infants and Children (WIC) Program

State agencies which administer the WIC program are eligible to receive donated foods from the Department. Section 250.51 of the proposed rule outlined the procedures by which State agencies may request the donated foods for distribution to WIC Program participants. Those donated foods which are included in the WIC food package must be paid for by the State agencies with funds allocated to the State for the WIC Program. Donated foods which are provided to participants in addition to the quantities authorized for the food package are made available to the State agency free of charge. Since no comments were received on this provision, § 250.51 is retained in this interim rule as proposed.

List of Subjects in 7 CFR Part 250

Aged, Agricultured commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Chapter II is amended by revising Part 250 to read as follows:

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

Subpart A—General

Sec.

250.1 General purpose and scope.
250.2 Administration.
250.3 Definitions.

Subpart B—General Operating Provisions

250.10 Eligible distributing and subdistributing agencies.
250.11 Eligibility determination for recipient agencies and recipients.
250.12 Agreements and contracts.
250.13 Distribution and control of donated foods.
250.14 Storage facilities.
250.15 Financial management.
250.16 Maintenance of records.
250.17 Reports.
250.18 Audits.
250.19 Reviews.
250.20 Sanctions.
250.21 Civil rights.
250.22 Complaints.

Subpart C—Processing and Labeling of Donated Foods

250.30 State processing of donated foods.

Subpart D—Eligible Recipients Agencies and Programs

250.40 Nonprofit summer camps for children.
250.41 Charitable institutions.
250.42 Nutrition programs for the elderly.
250.43 Disaster organizations.
250.44 Special food assistance programs.
250.45 Commodity Supplemental Food Program.
250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.
250.47 Food Distribution Program on Indian Reservations.
250.48 School food authorities and commodity schools.
250.49 Nonresidential child care institutions.
250.50 Service institutions.
250.51 Special Supplemental Food Program for Women, Infants, and Children.

Subpart E—Where to obtain Information

250.60 Program information.

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); Sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); Sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); Sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); Sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); Sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); Sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); Secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); Sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); Sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); Sec. 1304(a) Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); Sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); Sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 1114(a), Pub. L. 97–98, 95 Stat. 1269 (7 U.S.C. 1431e); Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301), unless otherwise noted.

Subpart A—General

§ 250.1 General purpose and scope.

This part prescribes the terms and conditions under which donated foods may be obtained from the Department by Federal, State and private agencies for use in any State in child nutrition programs, nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, the Commodity Supplemental Food Program, the Special Supplemental Food Program for Women, Infants, and Children, the Food Distribution Programs on Indian Reservations and the assistance of needy persons.

§ 250.2 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of

the program. FNS will provide assistance to distributing agencies and evaluate all levels of program operations to assure that the goals of the program are achieved in the most effective and efficient manner possible.

(b) *Delegation to distributing agency.* The distributing agency is responsible for effective and efficient administration of program operations within its jurisdiction and shall administer the program in accordance with the requirements of this Part and FNS guidelines and instructions. Distributing agencies may impose additional requirements for participation that are not inconsistent with the provisions of this Part, except that this provision shall not apply to distribution to households on all or part of an Indian reservation which is participating in the Food Distribution Program under Part 253 and Part 254 of this chapter. The distributing agency shall provide guidance to subdistributing agencies and recipient agencies on all aspects of program operations.

(c) *Personnel.* Each distributing agency shall provide adequate personnel, to administer the program in accordance with this part.

§ 250.3 Definitions.

"Charitable institutions" means:

(a) A nonpenal, noneducational public (Federal, State or local) institution,

(b) A nonprofit, tax exempt, private hospital, or

(c) Any other nonprofit, noneducational, tax exempt private institution organized to provide charitable or public welfare services in the same place without marked changes and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a meal service on a regular basis. Charitable institutions include any institution defined as "service institution"; "nonresidential child care institution"; or "school" which is not a commodity school or does not participate in a child nutrition program. For purposes of this paragraph, tax exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered "noneducational" even though educational courses are given, where such courses are incidental to the primary purpose of the charitable institution.

"Child nutrition program" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program (Parts 210, 220, 225, and 226 respectively of this chapter).

"Commodities" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Donated Foods").

"Commodity school" means a school that does not participate in the National School Lunch Program under Part 210 of this chapter but which operates a nonprofit school food service under agreement with the State educational agency or FNSRO as provided for under Part 210 of this Chapter and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under Part 240 of this Chapter for processing and handling of the donated foods.

"Contract value of the donated foods" means the price assigned by the Department to a donated food which shall reflect the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Contracting agency" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

"Department" means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is the donor under the pertinent legislation.

"Disaster organizations" means organizations authorized by appropriate Federal or State officials to assist disaster victims.

"Disaster victims" means persons who, because of acts of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

"Discount system" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contract value of the donated foods contained in the end products.

"Distributing agency" means a State, Federal or private agency, or Indian Tribal Organization (ITO) which enters into an agreement with the Department for the distribution of donated foods to eligible recipient agencies and recipients and the Food and Nutrition Services of the Department when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies pursuant to the National Commodity Processing System. A distributing agency may also be a recipient agency.

"Distributor" means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

"Donated foods" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Commodities").

"Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, health, and safety or to avert or lessen the threat of a disaster.

"End product" means a product containing any amount of donated foods which have been processed.

"Federal acceptance service" means the acceptance service provided by:

(a) The applicable grading branches of the Department's Agricultural Marketing Service (AMS),

(b) The Department's Federal Grain Inspection Service, and

(c) The National Marine Fisheries Service of the U.S. Department of Commerce.

"Fiscal year" means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following year.

"FNS" means the Food and Nutrition Service of the Department of Agriculture.

"FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department of Agriculture.

"Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.12(c) of this part or in accordance with Parts 210, 220, 225, or 226 of this chapter.

"Household" means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual living alone.

"In-kind replacement" means replacement of lost donated foods with a quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the Department's cost of replacing the lost foods.

"Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974 (42 U.S.C. 5121), above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (This definition is taken from the Disaster Relief Act of 1974.)

"Multi-State processor" means:

(a) A processor which has entered into a processing contract with contracting agencies in more than one State, or

(b) A processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which either the processor's plant or business office is located.

"Needy persons" means:

(a) Persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance,

(b) All the members of a household who are certified as in need of food assistance, and

(c) Disaster victims.

"Nonprofit school food service" means all food service operations conducted by the school food authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food services.

"Nonprofit summer camps for children" means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761), and in which, during the months of May through September, meal services are conducted for children of high school grade and under.

"Nonresidential child care institution" means any institution (as defined in Part 226 of this chapter) which participates in the Child Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

"Nutrition program for the elderly" means a project conducted by a recipient of a grant or contract under Title III or Title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a).

"Offer-and-acceptance system" means a procedure whereby a school food authority is given the opportunity to order only the amounts and varieties of donated foods it desires for its school lunch program on the basis of advance notification by the distributing agency.

"Performance supply and surety bond" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

"Processing" means:

(a) The conversion of a donated food or donated foods into a different end product or

(b) The repackaging of a donated food or donated foods.

"Processing fee" means the amount charged to a contracting agency for a processor's services.

"Processor" means a commercial facility, other than a food service management company, which processes donated foods.

"Program" means the Food Distribution Program.

"Recipient agencies" means nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, disaster organizations, school food authorities, schools, nonresidential child care institutions, service institutions, and welfare agencies receiving foods for their own use or for distribution to eligible recipients.

"Recipients" means the needy persons receiving commodities for household consumption.

"Refund application" means an application by a recipient agency in any form acceptable to the processor which certifies purchase of end products and requests a refund of the contract value of the donated foods contained in the end products purchased.

"Refund system" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the contract value of the donated foods contained in the end products.

"School" means:

(a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when recognized as part of the education system of the States;

(b) Any public or nonprofit private classes of preprimary grade when they are conducted in those schools defined in paragraph (a) of this definition having classes of primary or of higher grade;

(c) Any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or

(d) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"School food authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit school food service therein or otherwise approved by FNS to operate the NSLP.

"School year" means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"Secretary" means the Secretary of Agriculture.

"Section 4(a)" means section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). Section 4(a) authorizes the purchase of foods for distribution to maintain the traditional level of assistance for food assistance programs as are authorized by law, including institutions, supplemental feeding programs, disaster areas, summer camps for children, the Trust Territory of the Pacific Islands, and Indians whenever a tribal organization requests distribution of federally-donated foods under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)).

"Section 6" means section 6 of the National School Lunch Act, as amended

(42 U.S.C. 1755). Section 6 authorizes the purchase of foods for distribution to schools and institutions participating in child nutrition programs under the National School Lunch Act and specifies the level of assistance which is to be provided.

"Section 14" means section 14 of the National School Lunch Act, as amended (42 U.S.C. 1762a). Section 14 authorizes the purchase of foods for distribution to maintain the annually programmed level of assistance for programs carried on under the National School Lunch Act, the Child Nutrition Act of 1966, and Title III of the Older Americans Act of 1965.

"Section 32" means section 32 of Public Law 74–320, as amended (7 U.S.C. 612c). Section 32 authorizes the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.

"Section 311" means section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a). Section 311 authorizes the purchase of commodities for nutrition programs for the elderly.

"Section 416" means section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). Section 416 authorizes the Department to donate basic nonperishable foods acquired through Federal price-support operations for use by needy persons, for use in nonprofit school lunch programs and nonprofit summer camps for children, and for use in charitable institutions to the extent that needy persons are served.

"Section 709" means section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1). Section 709 authorizes the purchase of adequate supplies of dairy products to meet the requirements of schools, domestic relief distribution, and other programs authorized by law when the stocks of the Commodity Credit Corporation are insufficient to meet those requirements.

"Service institutions" means camps or sponsors (as those terms are defined in Part 225 of this Chapter) which participate in the Summer Food Service program authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761).

"Similar replacement" means replacement of lost donated foods with a quantity of similiar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods. Such replacement shall be subject to the approval of the FNSRO.

"State" and "United States" means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State Agency on Aging" means:

(a) the State agency that has been designated by the Governor and approved by the United States Department of Health and Human Services (DHHS) to administer nutrition programs for the elderly under Title III of the Older Americans Act of 1965, as amended or

(b) The Indian tribal organization which has been approved by DHHS to administer nutrition programs for the elderly under Title VI of such act.

"Students in home economics" means students in regular classes wherein they are taught general home economics including food preparation, cooking, serving, nutrition, food purchasing, child care and health.

"Subdistributing agency" means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency.

"Substituted food" means domestically produced food that is purchased or manufactured by a processor and is substituted for donated food.

"Substitution" means:

(a) The replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality (i.e. cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or

(b) In the case of donated nonfat dry milk, substitution as defined under (a) of this definition or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

"Welfare agency" means a public (Federal, State or local) or private agency offering assistance on a charitable or welfare basis to needy persons, who are not residents of an institution, and to Tribal councils designated by the Bureau of Indian Affairs.

Subpart B—General Operating Provisions

§ 250.10 Eligible distributing and subdistributing agencies.

(a) *State and Federal agencies.* Federal agencies and such State agencies as are designated by the Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated food on a State-wide basis and which apply directly to FNS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

§ 250.11 Eligibility determination for recipient agencies and recipients.

(a) *Verification of recipient agency eligibility.* Distributing agencies at the request of FNS shall:

(1) Verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have a current agreement with the distributing agency to receive donated food in accordance with § 252.1(c) and

(2) Report the results of such verification to FNS within timeframes determined by FNS.

(b) *Eligibility of recipient agencies and recipients.* Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Distributing agencies shall consider the past performance of recipient agencies when approving applications for participation. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with § 250.12(b) and make donated food available. Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however:* That the State agency or FNSRO administering the applicable program shall determine the eligibility under this Part of school food authorities participating under Part 210 or Part 220, or sponsors participating in the Summer Food Service Program for Children under Part 225, of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under Part 226 of this chapter.

§ 250.12 Agreements and contracts.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this Part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements. The agreements shall be effective for no longer than one year and must be completed by September 30 of each year. In addition, agreements between the Department and State Agencies on Aging which elect to receive cash in lieu of commodities shall also be effective for no longer than one year and must be completed by September 30 of each year.

(b) *Distributing agency agreements.* Distributing agencies shall enter into written agreements with all subdistributing agencies, recipient agencies, warehouses, carriers, or other entities to which distributing agencies deliver donated foods under their distribution program. Distributing agencies shall be responsible for ensuring that program integrity is maintained by all entities with whom agreements are entered into. All agreements shall contain such terms and conditions as the distributing agency deems necessary to ensure that:

(1) The distribution and use of donated foods is in accordance with this Part,

(2) Subdistributing agencies, recipient agencies, warehouses, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence,

(3) Subdistributing agencies and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and

(4) Subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to, donated foods.

To the extent that bills of lading and warehouse receipts satisfy the above-stated criteria, the distributing agency may consider such documents as appropriate agreements. The agreement shall be in effect for not longer than one year and shall provide that it may be extended at the option of both parties for two additional one year periods. Agreements may be terminated for cause by either party upon 30 days notice. At the time the agreement is extended, the party contracting with the distributing agency must update all pertinent information and must demonstrate that all donated food received during the prior contract period has been accounted for.

(c) *Food service management company agreements.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. In instances when a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company which shall expressly provide that:

(1) Any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation and it is the responsibility of the recipient agency to demonstrate that the full value of all donated foods is used solely for the benefit of the recipient agency; and

(2) The books and records of the food service management company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the fiscal year to which they pertain.

All food service management contracts shall be subject to review by the distributing agency for compliance with requirements of this section in accordance with § 250.19(b)(1). In the case of nonprofit summer camps for children, charitable institutions and nutrition programs for the elderly, the contract shall be in effect for no longer than one year and shall provide that it may be extended at the option of both parties for two additional one-year periods. Contracts may be terminated for cause by either party upon 30 days notice. At the time the contract is extended, the nonprofit summer camp for children, charitable institution or nutrition program for the elderly must update all pertinent information and must demonstrate that all donated food received during the previous contract period has been accounted for.

(d) *Storage facility contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into a written contract for the lease of storage facilities in accordance with § 250.14(c).

(e) *Processing contracts.* When contracting for the processing of donated foods, contracting agencies shall enter into agreements with processors in accordance with § 250.30(c).

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods.* (1) *Availability and use.* Donated foods shall be available only for distribution and use in accordance with the provisions of this Part and, with respect to distribution to households on all or part of an Indian reservation, of Part 253 and 254 of this chapter. Donated foods not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. Donated foods which are provided as part of an approved food package or authorized program level of assistance may be transferred between like recipient agencies with only prior authorization of the distributing agency Donated foods which are provided in addition to the State's authorized program level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (schools to charitable institutions), which have been provided as part of an approved food package or authorized program level of assistance, must be approved by the appropriate FNSRO. Food donation under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under 7 CFR Part 251. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP. All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§ 250.16 and 251.10(a).

(2) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food in addition to the general terms and conditions set forth herein.

Every attempt shall be made to deliver the donated foods in accordance with requested schedules. However, the Department shall not be responsible for delay in delivery or for nondelivery of donated foods due to any cause.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(4) *Quantities.*

(i) The quantity of donated foods to be made available for donation under this Part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(5) *Demonstrations and tests.* Notwithstanding any other provision of this Part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonostrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(b) *Processing and other costs.* The Department shall pay such processing, reprocessing, transporting, handling and other charges accruing up to the time of transfer of title to distributing agencies as is deemed in the best interest of the Department.

(c) *Transfer of title.* Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.

(d) *Distribution of donated foods to recipient agencies or recipients*—(1) *Distribution.* Donated foods shall be distribute only to recipient agencies an recipients eligible to receive them under this part (see Subpart D). Distributing agencies shall require that welfare agencies and disaster organizations distributed donated foods only to recipients eligible to receive them under this part. It shall not be deemed a failure to comply with the provisions of this part if recipient agencies serve meals containing donated foods to persons other than those who are eligible under this part, when such persons share common preparation, serving or dining facilities with eligible persons (needy persons, children, participants in nutrition programs for the elderly) and at least one of the following is true:

(i) Such other persons are common beneficiaries with the eligible persons of the program of the recipient agency, or

(ii) Such other persons are few in number compared to the eligible persons and receive their meals as an incident of their service to the eligible persons.

Such other persons include, but are not limited to teachers, disaster relief workers, and staff members. Nothing in this paragraph shall be construed as authorizing allocation or issuance of donated foods to recipient agencies in greater quantity than that authorized for the assistance of persons eligible under this part.

(2) *Normal food expenditures.* Section 416 donated foods shall not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods.

(e) *Improper distribution, loss of or damage to donated foods.* (1) If a distributing agency improperly distributes or uses any donated foods or causes loss of or damage to a donated food through its failure to provide proper storage, care or handling, the provisions set forth in § 250.15(c) shall apply.

(2) In instances when it is determined by a distributing agency that a claim exists against a subdistributing agency, recipient agency, warehouse, carrier, processor or other person, the distributing agency shall pursue claims in accordance with § 250.15(c).

(f) *Disposition of damaged or out-of-condition foods.* Donated foods which are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. Such instructions may direct that unfit donated food be:

(1) Sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department;

(2) Sold in a manner prescribed by the Department with the proceeds thereof retained for use in accordance with the provisions of § 250.15(f);

(3) Used in such manner as will serve a useful purpose as determined by the Department; or

(4) Destroyed in accordance with applicable sanitation laws and regulations.

Upon a finding by the Department that donated food are unfit for human consumption at the time of delivery to the distributing agency and when the Department or appropriate health officials require that such donated foods be destroyed, the Department may pay to the distributing agency any expenses incurred in connection with such donated foods as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated foods.

(g) *Redonations.* Whenever a distributing agency has any donated food on hand which it cannot efficiently utilize, it shall immediately make a request to the appropriate FNSRO, in writing, for instructions as to the disposition of such donated food. Distributing agencies requesting authority from the Department to make redonation of any donated foods shall, upon the Department's request, have such donated foods federally inspected. Expenditures incurred by the distributing agency as a result of redonation shall be handled in accordance with § 250.15(e).

(h) *Embezzlement, misuse, theft, or obtainment by fraud of donated foods and donated food-related funds, assets, or property.* Notwithstanding paragraph (c) of this section concerning transfer of title to donated foods, whoever embezzles, willfully misapplies, steals, or obtains by fraud, donated foods or any funds, assets, or property deriving from donated foods or whoever receives, conceals, or retains such donated foods, funds, assets, or property for his/her own use or gain, knowing such donated foods, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended (42 U.S.C. 1760(g)) or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). For the purpose of this paragraph "funds, assets, or property" include, but are not limited to funds accruing from the sources identified in § 250.15(f) (1) and (2), donated foods which have been processed into different end products as provided for under Subpart C of this part, and the containers in which donated foods have been received from the Department. Distributing agencies shall immediately notify FNSRO of any

suspected violation of section 12(g) or section 4(c) to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 12(g) or section 4(c) is warranted. Prosecution of violations by the Federal Government shall not relieve any distributing agency of its obligation to obtain recovery for improperly distributed or lost donated foods, as required by § 250.15(c).

§ 250.14 Storage facilities.

(a) *Standards for storage facilities.* Distributing agencies, subdistributing agencies and recipient agencies shall provide facilities for the handling, storage and distribution of donated foods which:

(1) Are sanitary and free from rodent, bird, insect and other animal infestation;

(2) Safeguard against theft, spoilage and other loss;

(3) Maintain foods at proper storage temperatures;

(4) Stock and space foods in a manner so that USDA-donated foods are readily identified;

(5) Store donated food off the floor in a manner to allow for adequate ventilation; and

(6) Take other protective measures as may be necessary.

Distributing agencies, subdistributing agencies and recipient agencies shall ensure that storage facilities have obtained all required Federal, State and/or local health inspections and/or approvals and that such inspection/approvals are current.

(b) *Reviews.* All distributing agency-level storage facilities shall be reviewed annually. Distributing agencies shall ensure that subdistributing and recipient agencies. Conduct annual reviews of their respective storage facilities. Documentation shall be maintained on file at the distributing agency or local level as appropriate to reflect compliance with this section, including documentation of corrective action in cases of noncompliance. Corrective action must be taken immediately on all deficiencies identified in the review and the result of the corrective action must be forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(c) *Contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into written contracts to be effective for no longer than one year. The contract may be extended at the option of both parties for two additional one year periods. At the time the contract is extended, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. The contract shall, at a minimum, contain the following:

(1) Assurance that the storage facilities will be maintained in accordance with the standards specified in paragraph (a) of this section;

(2) Evidence that donated food shall be clearly identified;

(3) Assurance that an inventory system shall be maintained and an annual physical inventory will be conducted; and reconciled with the inventory records;

(4) Beginning and ending dates of the contract;

(5) A provision for immediate termination of the contract due to noncompliance on the part of the warehouse management;

(6) A provision allowing for termination of the contract for cause by either party upon 30 days written notification;

(7) The amount of any insurance coverage, which has been purchased to protect the value of food items which are being stored; and

(8) Express written consent for inspection and inventory by the distributing agency, subdistributing agency, recipient agency, the Comptroller General, the Department or any of their duly authorized representatives.

(d) *Physical inventory.* During the annual review required by § 250.14(b), distributing agencies, subdistributing agencies and recipient agencies shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency which contracted with or maintained the storage facility. Food items which have been lost, stolen or found to be out-of-condition shall be identified during the physical inventory and reported by the subdistributing or recipient agency to the distributing agency. Potential excessive inventory, as described in paragraph (e) of this section, shall be reported by the subdistributing or recipient agency to the distributing agency. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective action forwarded to the distributing agency. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(e) *Excessive inventories.* (1) The distributing agency shall determine if a subdistributing or recipient agency's inventories are excessive based on:

(i) The rate of distribution;

(ii) Anticipated distribution; and

(iii) Other concerns such as logistical and economic considerations.

(2) In no case may the inventory level of each donated food in storage exceed a six-month supply unless sufficient justification for additional inventory has been submitted and approved. Subdistributing agencies and recipient agencies shall submit justification to the distributing agency in instances where more than a six-month inventory is needed. Justification shall be submitted by the distributing agency to the FNSRO for approval in instances where more than a six-month inventory is needed at the distributing agency level.

(3) The distributing agency shall take corrective action to ensure that excess inventories at all levels are eliminated and shall document actions taken to reduce excessive inventories.

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Except as provided in paragraph (a)(2) of this section, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by the distributing or subdistributing agencies. Any system of assessment operated by the distributing or subdistributing agency shall have the prior approval of and be subject to review by the FNSRO. The charges assessed shall be used solely in accordance with the provisions of paragraph (f) of this section.

(2) For the period May 1, 1983, through September 30, 1988, whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under Part 251 of this chapter.

(3) Under no circumstances shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited (except for the nutrition programs for the elderly) in connection with the receipt of donated foods for any purpose.

(b) *Sale of containers.* When containers or packing materials in which donated foods are received are disposed of by sale, the proceeds of such sale shall be used solely in accordance with

the provisions of paragraph (f)(2) of this section.

(c) *Claims.* If a distributing agency improperly distributes or uses any donated foods, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, the distributing agency shall, at the Department's option.

(1) Replace the donated food in its distribution program in kind, or, in the case of section 6 donated foods, where replacement in kind may not be practicable, with other similar foods, or

(2) Pay to the Department the value of the donated food as determined by the Department.

Upon the happening of any event creating a claim in favor of a distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, for the improper distribution, use, or loss of, or damage to, a donated food, the distributing agency shall take action to obtain recovery. All amounts collected by such action shall, at the Department's option, be used in accordance with the provisions of paragraph (c)(1) of this section, or, except for amounts collected on claims involving section 6 donated foods, shall be expended for program purposes in accordance with the provisions of paragraph (f) of this section. Determinations by a distributing agency that a claim has or has not arisen in favor of the distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier or other person, shall, at the option of the Department, be approved by the Department prior to the distributing agency taking action thereon. Where prior approval has not been given by the Department, a distributing agency's claim determinations shall be subject to review by the Department. In the case of an inventory shortage, when the loss of any one commodity does not exceed one percent of the total quantity of the donated food distributed or utilized from any single storage facility during the fiscal year in which the loss occurred, or during the period for which an audit was conducted by representatives of the Department, or, if approved by FNS, during the period for which an audit was conducted by the distributing agency, if the distributing agency finds that: (i) The cause of the shortage cannot be established, (ii) the lost donated foods were held in non-commercial storage or other facilities owned or operated by the distributing agency, a subdistributing agency or a recipient agency, and (iii) there is no indication that the loss was the result of negligence or continued inefficiency in operations, the distributing agency need not take any further claims action, but the factual basis for not taking further claims action shall be subject to review by the Department. Furthermore, distributing agencies shall not be required to file or pursue a claim for a loss which does not exceed an amount established by State law, regulations, or procedure as a minimum amount for which a claim will be made for State losses generally, but no such claim shall be disregarded where there is evidence of violation of Federal or State statutes. Distributing agencies which fail to pursue claims arising in their favor, or fail to provide for the right to assert such claims, or fail to require their subdistributing agencies and recipient agencies to provide for such rights in accordance with § 250.12(b), shall be responsible to the Department for replacing the donated foods or paying the value thereof in accordance with the provisions of paragraph (c)(1) or (2) of this section. Distributing agencies which pursue claims arising in their favor, but fail to obtain full restitution shall not be liable to the Department for any deficiency unless the Department determines that the distributing agency fraudulently or negligently failed to take reasonable action to obtain restitution. The Department may, at its option, require assignment to it of any claim arising from the distribution of donated foods.

(d) *Demurrage.* Demurrage or other charges which accrue after a car or truck has been placed for unloading by the delivering carrier, or which accrue because placement of a car or truck is prevented, shall be borne by the distributing agency, except that demurrage or other charges may be borne by the Department where such charges accrue because of actions by the Department and without the fault or negligence of the distributing agency.

(e) *Redonation expenditures.* In accordance with § 250.13(g), whenever a distributing agency requests authority to make redonation of any donated foods and the Department requests that the donated foods be federally inspected, these inspections will be made at the expense of the distributing agency. Any donated foods which the Department determines are acceptable for redonation shall be moved at the distributing agency's expense to the closest point within the FNS region in which the State is located where it can be utilized, or to a closer point outside the region, if such a transfer is mutually agreed to by the Department and the distributing agency. In those instances in which the distributing agency satisfactorily demonstrates to the Department that the need for any redonation resulted from no fault or negligence on its part, the Department shall assume such transportation costs as it determines to be proper. Whenever a redonation is made at the request of the Department, the Department shall pay all transportation and handling costs in connection with such redonation and shall pay to the distributing agency all storage and handling costs accrued on the donated foods at the time of redonation, as determined by the Department, except when the request is made as a result of negligence on the part of the distributing agency.

(f) *Use of funds accruing in operation of the program.* (1) *Funds accruing from claims.* Funds accruing from recoveries from loss or damage claims (which are authorized under paragraph (c) of this section to be expended for program purposes) shall be used only for the payment of expenses of the food distributing program, including transportation, storage and handling or donated foods, salaries of persons directly connected with the program, and other administrative expenses. In accordance with paragraph (f)(4) of this section, the receipt and expenditure of funds so accrued shall be reviewed by the distributing agency to determine that fund balances are not in excess of program needs.

(2) *Other funds.* Funds accruing from the sale of containers, packing materials, salvage of donated foods, distribution charges, or insurance shall be returned to the Department or used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage and handling of donated foods, salaries of persons directly connected with the program and other program-related expenses. Funds accruing from the collection of distribution charges which are determined to be in excess of program needs pursuant to paragraph (f)(4) of this section shall be used in accordance with that paragraph. Funds accruing from the operation of the program shall not be used for those costs which are unallowable under the cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart T. These unallowable costs include, but are not limited to:

(i) Bad debts;
(ii) Contingencies;
(iii) Contributions and donations;
(iv) Entertainment;
(v) Fines and penalties;
(vi) Governor's expenses;
(vii) Interest and other financial costs;

(viii) Legislative expenses; and

(ix) Losses on other grants.

(3) *Segregation of funds.* Distributing agencies and subdistributing agencies shall maintain two separate accounts for funds accruing from program operations. Funds accruing from the collection of distribution charges shall be maintained in an operating account. Funds accruing from the sale of containers, salvage of foods, insurance and recoveries of claims for the loss or damage of donated foods shall be maintained in a salvage account.

(4) *Excess funds.* The distributing agency shall review the receipt and expenditures of funds annually to ensure that fund balances are not in excess of program needs. At a maximum, the operating account fund shall not exceed the sum of the previous year's highest three-month expenditures. Funds exceeding this maximum shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. FNSRO may determine that funds equal to or less than the expenditures for the previous year's highest three months are in excess of what is needed. In such instances, the distributing agency shall reduce the excess funds in the operating account by reducing distributing charges or returning the funds to the contributor. The salvage account will have no set limit. FNSRO must, however, give prior approval to each deposit to or expenditure from the salvage fund which is in excess of $2,500. The distributing agency shall impose upon subdistributing agencies and recipient agencies similar provisions for the use of such funds accruing from the operation of their programs.

§ 250.16 Maintenance of records.

(a) *General requirements.* (1) Accurate and complete records shall be maintained with respect to the receipt, distribution/use and inventory of donated foods including:

(i) End products processed from donated foods and

(ii) The determination made as to liability for any improper distribution, use of, loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency.

Such records shall also be maintained with respect to the receipt and disbursement of funds arising from the operation of the distribution program, including the determination as to the amount of payments to be made by any processor, upon termination of processing contracts.

(2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, distribution/disposal and inventory of donated foods, including end products processed from donated foods, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with § 250.30(k).

(3) Unless a distributing agency maintains an offer-and-acceptance system in accordance with § 250.48(e), the distributing agency shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities. School food authorities shall also be required to maintain such records of refusals.

(4) Each processor, food service management company, warehouse, or other entity which contracts with a distributing agency, subdistributing agency or recipient agency shall be required to keep accurate and complete records with respect to the receipt, distribution/disposal, storage and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which permit an accurate determination of the donated-food inventory. The processor shall also be required to keep formula, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency. Processors must maintain records which will permit a determination regarding compliance with the contracting provisions required by § 250.30(f) (3) and (4) as well as maintain records used as the basis for compiling the processor performance reports required by § 250.30(m).

(5) All recipient agencies shall be required to keep accurate and complete records showing the data and method used to determine the number of eligible persons served by that agency.

(6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, food service management company, warehouse or other entity to maintain records required by this Section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.13(e).

(b) *Length of maintenance.* All records required by this Section shall be retained for a period of three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.

§ 250.17 Reports

(a) *Monthly Report of Receipt and Distribution of Donated Foods (FNS–155).* Distributing agencies shall complete and submit to the FNSRO monthly inventory reports covering the receipt and distribution of donated foods on Form FNS–155 or other format approved by FNS. The report shall be submitted no later than 30 calendar days after the end of the reporting month. The distributing agency shall submit a list of individual food orders received for each food item delivered by the Department as an attachment to the FNS–155.

(b) *Processing inventory reports.* Distributing agencies shall complete and submit a quarterly processing inventory report in accordance with § 250.30(o).

(c) *Performance reports.* Monthly reports of performance shall be submitted by processors to distributing agencies in accordance with § 250.30(m).

(d) *Other reports.* Distributing agencies shall complete and submit other reports relative to distribution operations in such form as may be required from time to time by the Department.

(Reporting requirements contained in paragraph (a) approved by the Office of Management and Budget under control number 0584–0001. Reporting requirements contained in paragraph(d) approved by the Office of Management and Budget under control numbers 0584–0028, 0584–0109, 0584–0288 and 0584–0293).

§ 250.18 Audits.

(a) *Right of inspection and audit.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements of this Part at any reasonable time. Subdistributing agencies, recipient agencies, processors, food service management companies and warehouses shall be required to

permit similar inspection and audit by such entities or their representatives. Fiscal matters shall continue to be reviewed in audits under the Single Audit Act (31 U.S.C. 7501–07) and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(b) *Independent CPA audits of multi-State processors.* (1) For any year in which a multi-State processor receives more than $250,000 in donated foods, the processor shall obtain an independent CPA (certified public accountant) audit for that year. Multi-State processors which receive $75,000 to $250,000 in donated food each year shall obtain an independent CPA audit every two years and those which receive less than $75,000 in donated foods each year shall obtain an independent CPA audit every three years. Those multi-State processors which are in the two or three-year audit cycle shall move into the next audit cycle at the point in time in which the value of donated foods received reaches $75,000 or $250,000 in any year. In instances in which the Department determines that the audit is not acceptable or that the audit has disclosed serious deficiencies, the processor shall be subject to additional audits at the request of FNS.

(2) Audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I) and the FNS Audit Guide for Multi-State Processors. At the discretion of FNS, auditors will be required to attend training sessions conducted by the Department.

(3) The costs of the audits, including those costs associated with training, shall be borne by the processors.

(4) Audit findings relative to those elements associated with the processing of donated food shall be submitted to the processor and to FNS concurrently.

(5) Noncompliance with the audit requirements in paragraph (b)(1) of this section will render the processor ineligible to enter into another processing contract with any contracting agency until the required audit has been conducted and deficiencies corrected.

(6) *Processor response.* Multi-State processors shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include:

(i) Corrective action which has already been taken to eliminate the deficiency;

(ii) Corrective action which the processor proposes to take to eliminate the deficiency;

(iii) The timeframes for the implementation and completion of the corrective action;

(iv) A determination of what caused the deficiency; and

(v) Deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

Multi-State processors shall submit a written response to FNS in accordance with timeframes established by FNS.

§ 250.19 Reviews.

(a) *General.* Each distributing agency shall establish a review system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations.

(b) *Responsibilities of distributing agencies.* (1) Each distributing agency shall establish review procedures encompassing eligibility, food ordering procedures, storage practices, inventory controls, reporting and recordkeeping requirements and compliance with nondiscrimination provisions. The procedures shall include:

(i) An on-site review of all charitable institutions, nutrition programs for the elderly and nonprofit summer camps for children under agreement in accordance with § 250.12(b) at least once every 4 years, with not fewer than 25 percent of each of these recipient agency categories being reviewed each year. These reviews shall also include on-site reviews of storage facilities to ensure compliance with § 250.14(a);

(ii) An on-site review at least once every 2 years of all processors except those that are multi-State processors as defined in § 250.3, with no fewer than 50 percent being reviewed each year;

(iii) An annual on-site review of each storage facility utilized by the distributing agency. On-site reviews conducted by FNS may be considered as contributing to the fulfillment of the minimum coverage required by this paragraph; and

(iv) A biennial review of all food service mangement companies under contract with recipient agencies in accordance with § 250.12(c) which are not under contract with a school participating in the National School Lunch Program or a Commodity School under Part 210 of this chapter, or a school participating in the School Breakfast Program under Part 220 of this chapter.

(2) Each distributing agency shall design and implement a system to verify sales of end products to all recipient agencies under that distributing agency's authority in instances when a processor transfers end products to a distributor and the distributor sells the end product to the recipient agencies at a discount and the distributor receives a refund from the processor. At a minimum, such a system must:

(i) Provide for the quarterly review of a statistically valid sample of sales information of all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors;

(ii) Support the projection of a claim against the processor when, in the review of the sample, it is determined that the value of donated foods has not been passed on to recipient agencies or when end products have been improperly distributed; and

(iii) Provide for the assessment of claims against the processor in accordance with FNS Instruction 410–1 Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified. Distributing agencies may delegate the responsibility of sales verification to processors. In such instances, the distributing agency must establish guidelines which the processor must follow in conducting sales verification. These guidelines must ensure that a statistically valid sample of sales is verified quarterly. Processors shall report their findings to the distributing agency on a quarterly basis in accordance with § 250.30(m).

Distributing agencies must review the processor's sales verification system and the processor's findings for adequacy and submit a copy of the review report of the system findings to the appropriate FNSRO.

(3) The distributing agency shall submit a report of review findings to each entity reviewed. The report shall include:

(i) Each deficiency found;

(ii) The factors contributing to each deficiency;

(iii) Recommendations for needed corrective action, including timetables for completion and/or claims action to be pursued, if any; and

(iv) Provisions for evaluating effectiveness of corrective actions.

A copy of each processor review report shall be provided to the appropriate FNSRO.

(4) Distributing agencies shall monitor progress toward completion and the effectiveness of corrective actions taken in eliminating program deficiences.

(5) In addition to the review requirements of paragraph (b)(1) of this section, each distributing agency shall make a continuing evaluation of all recipient agencies, and processors by monitoring performance reports, food

requests, participation data, and data regarding refunds and discounts to recipient agencies and distributors for the receipt of end products.

(6) Distributing agencies shall, where applicable, require that subdistributing agencies monitor and review their operations in accordance with this paragraph.

(c) *Responsibilities of State Agencies on Aging.* State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of § 250.42(c) shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods of U.S. origin for such programs.

§ 250.20 Sanctions.

Any distributing agency which has failed to comply with the provisions of this Part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

§ 250.21 Civil rights.

Distributing agencies, subdistributing agencies and recipient agencies shall comply with the Department's nondiscrimination regulations (7 CFR Parts 15, 15a, and 15b) and the FNS civil rights instructions to ensure that in the operation of the program no person is discriminated against because of race, color, national origin, age, sex or handicap.

§ 250.22 Complaints.

Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain or file evidence of such investigations and actions. The Department also reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled. Complaints alleged on the basis of race, color, national origin, age, sex or handicap shall be handled in accordance with § 250.21.

Subpart C—Processing and Labeling of Donated Foods

§ 250.30 State processing of donated foods.

(a) *General.* This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for the processing of donated foods and prescribes the minimum requirements to be included in such contracts. This section does not pertain to food service management companies.

(b) *Permissible contractual arrangements.* (1) A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system.

(2) A distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may receive end products made from those foods and produced under such processing contracts by virtue of the distributing agency—recipient agency agreement required by § 250.12(b). Under this arrangement and subject to the approval of the distributing agency:

(i) Processors shall utilize either a discount or a refund system as defined in § 250.3 when they sell end products directly to recipient agencies, or

(ii) When selling end products through a distributor, processors shall utilize either a refund system or a system which provides refunds to distributors and discounts to recipient agencies through a distributor in accordance with paragraph (e) of this section.

(3) Distributing agencies shall permit subdistributing agencies and recipient agencies to enter into processing contracts with a processor under arrangements similar to those described in paragraph (b) (1) or (2) of this section.

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and be reviewed by the appropriate FNSRO. Processing contracts shall terminate no later than one year after they have been entered into and shall not be extended without being renegotiated. Distributing agencies shall develop criteria for use in evaluating and selecting processing contracts. The selection criteria shall be used in selecting or rejecting processors in a manner that ensures equitable treatment of processors. The selection criteria shall, at a minimum, include:

(i) The nutritional contribution which the end product will provide;

(ii) The marketability of the end product;

(iii) The distribution method which the processor intends to utilize;

(iv) Price and yield schedule data;

(v) Any applicable labeling requirements; and

(vi) The ability of the processor to meet the terms and conditions set forth in the regulations.

These criteria will be reviewed by the appropriate FNSRO during the management evaluation review of the distributing agency. Distributing agencies and subdistributing agencies which enter into contracts on behalf of recipient agencies but which do not limit the types of end products which can be sold or the number of processors which can sell end products within the State are not required to follow the selection criteria. In addition to utilizing these selection criteria, when a contracting agency enters into a contract both for the processing of donated food and the purchase of the end products produced from the donated food, the procurement standards set forth in Attachment O to OMB Circular A-102 must be followed. Recipient agencies which purchase end products produced under Statewide agreements are also required to comply with Attachment O of OMB Circular A-102. Contracting agencies shall not enter contracts with processors which cannot demonstrate the ability to meet the terms and conditions of the regulations and the distributing agency agreements; furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit or an escrow account in an amount sufficient to protect the contract value of donated food on hand and on order; demonstrate the ability to distribute end products to eligible recipient agencies; provide a satisfactory record of integrity, business ethics and performance and provide adequate storage.

(2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.

(3) The contract shall be signed for the processor by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows:

(i) In a sole proprietorship, the owner shall sign the contract;

(ii) In a partnership, a partner shall sign the contract;

(iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) At a minimum, each processing contract shall include:

(i) The names and telephone numbers of the contracting agency and processor;

(ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated foods provided to the processor must be physically contained in the end products, with no allowable tolerance;

(iii) The contract value of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, weight or measure of the end products to be delivered;

(iv) A provision for:

(A) Termination of the contract upon thirty days written notice by the contracting agency or the processor and

(B) Immmediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor;

(v) In the event of contract termination, a provision for disposition of donated foods and end products in the processor's inventories or payment of funds in accordance with paragraph (j) of this section;

(vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraphs (g) and (h) of this section;

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (f) of this section shall be delivered only to recipient agencies eligible to receive such foods;

(viii) Provisions that the processor shall:

(A) Fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains full accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (k) of this section or to distributing agencies in accordance with paragraph (n)(2) of this section;

(B) Furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is sufficient to protect the contract value of all donated foods. Since the distributing agency is held liable by FNS for any donated foods provided to a processor the distributing agency shall determine the dollar value of the performance supply and surety bond, irrevocable letter of credit or the escrow account taking into consideration the

(*1*) Value of donated foods on hand;

(*2*) Value of donated foods on order and

(*3*) Anticipated usage rate during the contract period;

(C) Use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency;

(D) Apply as credit against the processing fee or return to the contracting agency:

(*1*) Any funds received from the sale of containers, and

(*2*) The market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;

(E) Substitute donated foods with commercially purchased foods only in accordance with paragraph (f) of this section;

(F) Meet the requirements of paragraph (i) of this section for labeling end products;

(G) Maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with § 250.16;

(H) Submit processing performance reports in accordance with paragraph (m) of this section; and

(I) Submit annual reconciliation reports and make payments to distributing agencies for any outstanding refund applications or excessive inventories in accordance with paragraph (n)(2) of this section;

(ix) A provision that approval of the contract by distributing agency shall not obligate that agency or the Department to deliver donated foods for processing;

(x) A description of the processor's quality control system and assurance that an effective quality control system will be maintained for the duration of the contract;

(xi) In instances when the processor is a multi-State processor as defined in § 250.3, a provision that the processor agrees to obtain an independent audit by a certified public accountant in accordance with § 250.18(b);

(xii) A requirement that inventory drawdowns shall be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss shall be obtained from non-donated foods;

(xiii) In instances when end products are sold through a distributor a description of the system which will be utilized for the sale of the end products to a recipient agencies;

(xiv) In instances when the distributing agency has delegated the responsibility for sales verification for end products provided by a distributor to recipient agencies at a discount, assurance that the processor will submit sales verification data to the distributing agency in accordance with § 250.30(m)(l); and

(xv) A provision that the contracting agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(d) *End products sold by processors.* When recipient agencies pay the processor for end products, the processing contract shall include:

(1) The processor's established wholesale price schedule for quantity purchases of specified units of end products, and

(2) An assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section.

(e) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be under either a refund

system as defined in § 250.3 or a system which provides refunds to distributors and discounts to recipient agencies. The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

(f) *Substitution of donated foods with commercial foods.* (1) The processing contract may provide for substitution of donated foods as defined in § 250.3. If the provision allowing substitution is included, the contract shall stipulate that:

(i) Only butter, cheese, corn grits, corn meal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, vegetable oil, spaghetti, and such other food as FNS specifically approves may be substituted (substitution of meat and poultry items shall not be permitted),

(ii) All components of commercial foods substituted for those donated must be of U.S. origin and be identical or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service, and

(iii) Substitution is allowed without advance approval by the distributing agency only when:

(A) It is necessary to replace donated food with commercial food to meet the 100 percent yield requirement; or

(B) The donated and commercial foods have been commingled through the use of joint storage tanks or bins; or

(C) The processing contract permits the use of concentrated skim milk which has been purchased or manufactured by the processor for donated nonfat dry milk.

(2) Documentation must be maintained by both parties in accordance with § 250.16. When there is substitution, the donated foods shall be used by the processor and shall not otherwise be sold or disposed of in bulk form. The applicable Federal acceptance service shall, upon request by the Department, the contracting agency or the distributing agency determine if the quality analysis meets the requirements set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods and, in the case of concentrated skim milk replacing donated nonfat dry milk, determine if the concentrated skim milk contains the amount of milk solids as specified in the contract. When donated foods are nonsubstitutable, the applicable Federal acceptance service shall ensure against unauthorized substitutions, and verify that quantities of donated foods used are as specified in the contract.

(3) When concentrated skim milk is used to replace donated nonfat dry milk, the contract shall also specify (in addition to the requirements in paragraph (c) of this section):

(i) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(ii) The weight ratio of concentrated skim milk to donated nonfat dry milk;

(A) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids;

(B) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(C) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(iii) The processor's method of verifying that the milk solids content of the concentrated skim milk is as stated in the contract;

(iv) A requirement that inventory drawdowns of donated nonfat dry milk shall be limited to an amount equal to the amount of concentrated skim milk, based on the weight ratio, used to produce the end product;

(v) A requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of nonfat dry milk, based on the weight ratio of the two foods;

(vi) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by the appropriate regulatory authority for the processing of Grade A milk products; and

(vii) A requirement that documentation sufficient to substantiate compliance with the contract provisions shall be maintained in accordance with § 250.16(a)(4).

(4) Except as specified in paragraph (f)(iii) of this section, processors must receive approval from the distributing agency prior to any substitution. Distributing agencies may approve a processor's request for substitution only when the distributing agency's inability to maintain the necessary inventory of donated food at the processor would disrupt the production of end products.

(5) Title to the substituted food shall transfer to the contracting agency upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this part.

(g) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to FSIS inspection, all donated meat and poultry processing shall be performed under AMS acceptance service grading. The cost of this service shall be borne by the processor. In the event the processor can demonstrate that grading is impractical, exemptions in the use of acceptance services shall be approved by the distributing agency prior to processing each order. Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the processor can demonstrate:

(1) That even with ample notification time, the processor cannot secure the services of a grader,

(2) That the cost for a grader would be unduly excessive relative to the value of foods being processed and that production runs cannot be combined or scheduled to enable prorating of the costs of services among the purchasers of end products, or

(3) The documented urgency of the recipient agency's need for the end product precludes the use of acceptance services.

Prior to approving a processor's request to waive the acceptance service requirement the distributing agency shall ensure, based on the processor's past performance, that the quality of the end product produced will in no way be adversely affected as a result of waiving the requirement.

(h) *Certification by acceptance service.* (1) All processing activities of donated foods shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service in addition to the requirements set forth in paragraph (g) of this section.

(2) In the case of substitutable donated foods, in deciding whether to require acceptance and certification, the

contracting agency should consider the dollar value of the donated foods delivered to the processor.

(3) When contracting agencies require certification in accordance with paragraph (h) (1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and volume of the donated foods and anticipated value of end products to be processed. The cost of this service shall also be borne by the processor.

(i) *Labeling end products.* (1) Except when end products contain donated foods that are substituted under paragraph (f) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled "Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies."

(2) Labels on all end products shall meet applicable Federal labeling requirements.

(3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Inspection Service of the Department, the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(j) *Termination of processing contracts.* (1) When contracts are terminated or completed and the processor has commodities remaining in inventory, the processor shall be directed, at the option of the distributing agency and the FNSRO, to do the following:

(i) With respect to nonsubstitutable commodities, the processor shall:

(A) Return the commodities to the contracting agency;

(B) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(C) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract;

(ii) With respect to substitutable commodities, the processor shall:

(A) With the concurrence of any affected contracting agencies, transfer the donated foods to the accounts of other contracting agencies with which the processor has contracts;

(B) Return the foods donated to the contracting agency;

(C) Replace the commodities with the same foods of equal or better quality as certified in accordance with paragraph (f)(2) of this section and deliver such foods to the contracting agency;

(D) Pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or

(E) Pay the contracting agency for the commodities based on the contract value stated in the processor's contract.

(2) When a processor's contract is terminated at the processor's request or due to noncompliance or negligence on the part of the processor and commodities remaining in the processor's inventory are transported pursuant to paragraph (j)(1)(i)(A), (j)(1)(ii)(B) or (j)(1)(ii)(C) of this section, the processor shall pay the transportation costs.

(3) Funds received by distributing agencies upon termination of contracts shall be used in accordance with FNS Instruction 410–1, Non-Audit Claims, Food Distribution Program.

(k) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraph (d) or (e) of this section, each recipient agency shall submit refund applications to the processor within 60 days of the date of purchase of end products in order to receive benefits. The recipient agency shall also forward a copy of the refund application to the distributing agency at the same time.

(2) In instances when refunds are to be provided to distributors which have sold end products to recipient agencies at a discount, distributors shall submit refund applications to processors within 60 days of the date of sale to recipient agencies in order to receive benefits.

(3) Not later than 10 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency or distributor equal to the stated contract value of the donated foods contained in the purchased end products covered by the application. Copies of requests for refunds and payments to recipient agencies and/or distributors shall be forwarded to the appropriate distributing agency by the processor.

(l) *Contract approvals.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processors, forward a copy of the contract to the appropriate FNSRO, and retain a copy for its files.

(m) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include:

(i) A list of all recipient agencies purchasing end products under the contract;

(ii) Donated-food inventory at the beginning of the reporting period;

(iii) Amount of donated foods received during the reporting period;

(iv) Amount of donated foods transferred to and/or from existing inventory;

(v) Number of units approved end products delivered to each eligible recipient agency during the reporting period and the number of pounds of each donated food represented by these delivered end products;

(vi) Donated food inventory at the end of the reporting period;

(vii) Number of pounds of each donated food represented in sales to distributors;

(viii) List of all contracting agencies and their locations with which the processor has processing contracts;

(ix) In instances in which sales verification has been delegated to the processor pursuant to § 250.19(b)(2), sales verification findings shall be reported as an attachment to the September, December, March and June performance reports in whatever format the distributing agency deems necessary; and

(x) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products for State processing contracts and that the processor has on hand or on order adequate quantities of foods purchased commercially to meet the processor's production requirements for commercial sales.

(2) In addition to reporting the information identified in paragraph (m)(1) of this section, processors which substitute concentrated skim milk for donated nonfat dry milk shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and

(ii) The number of pounds of concentrated skim milk, and the percent of milk solids contained therein, used in end products sold to recipient agencies.

(3) Distributing agencies shall review and analyze reports submitted by processors to ensure that performance under each contract is in accordance with the provisions set forth in this section.

(n) *Inventory controls.* (1) Distributing agencies shall monitor processor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of donated foods ordered by the contracting agency for processing purposes be in excess of anticipated usage or beyond the processor's ability to accept and store the donated foods at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits until such inventories have been reduced.

(2) For processors substituting concentrated skim milk for donated nonfat dry milk, distributing agencies shall review the processors' monthly performance reports to ensure that:

(i) Donated nonfat dry milk inventory is being drawn down based on the amount of milk solids contained in the concentrated skim milk which was used in end products sold to eligible recipient agencies;

(ii) An amount of milk solids equivalent to the amount in the donated nonfat dry milk is contained in end products sold to eligible recipient agencies; and

(iii) Donated nonfat dry milk is not being sold in bulk form.

(3) Processors shall complete and submit annual reconciliation reports to distributing agencies within 90 days following the end of the contract period. As a part of this annual reconciliation, processors shall pay distributing agencies for the contract value of donated foods.

(i) For any donated foods for which a timely refund application has not been submitted in accordance with paragraph (k) of this section and

(ii) For inventories in excess of a six-month supply.

In instances when the distributing agency has assigned an inventory level other than a six-month level, the processor shall pay the contract value of any donated food in excess of that level.

(4) Distributing agencies shall certify the accuracy of the annual reconciliation report and forward it to the FNSRO. All monies shall be used in accordance with FNS Instruction 410–1, Non-Audit Claims, Food Distribution Program.

(5) Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for product promotion or sales expansion.

(o) *Processing inventory reports.* (1) Distributing agencies shall submit to the FNSRO not later than 60 days following the close of each Federal fiscal quarter a report showing separately for each processor under agreement with contracting agencies within the State:

(i) The donated food inventory at the beginning of the previous quarter;

(ii) Amount of donated foods received during the quarter;

(iii) Amount of donated foods transferred to and/or from existing inventory;

(iv) Amounts of donated foods used during the quarter;

(v) Inventory at the close of the quarter;

(vi) Each contracting agency and its location with which the processor has processing contracts.

(2) In addition to reporting the information identified in paragraph (o)(1) of this section, for each processor which substitutes concentrated skim milk for donated nonfat dry milk the distributing agency shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to nonprogram outlets; and

(ii) The number of pounds of concentrated skim milk and the percent of milk solids contained therein used in end products sold to recipient agencies.

(p) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by:

(1) Giving that agency an opportunity to review all such contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR Parts 210, 225, and 226) or are otherwise suitable for use in such program;

(2) Consulting with the agency with regard to the labeling requirements for the end products; and

(3) Otherwise requesting technical assistance as needed from that agency.

(q) *FNSRO review of contracts and inventory reports.* The FNSRO shall:

(1) review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section;

(2) Allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section;

(3) Review and analyze the processing inventory reports required by paragraph (o) of this section to ensure that no additional donated foods shall be distributed to processors with excess inventories until such inventories have been reduced;

(4) Assist distributing agencies in reducing such inventories; and

(5) Review annual reconciliation reports required by paragraph (n) of this section and ensure that payments for outstanding refund applications or excessive inventories have been made.

(r) *Availability of copies of processing contracts.* Contracts entered into in accordance with this Section are public records and FNS will provide copies of such contracts to any person upon request. The FNSRO will retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the Federal fiscal year to which they pertain.

(s) *Processing activity guidance.* Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material shall be provided to contracting agencies, recipient agencies and processors at the time of the approval of the initial agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual shall include, at a minimum, statements of the distributing agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and

reporting requirements, (4) inventory controls, and (5) refund applications.

(Approved by the Office of Management and Budget under control number 0584-0007)

Subpart D—Eligible Recipient Agencies and Programs

§ 250.40 Nonprofit summer camps for children.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those summer camps which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the summer camp shall provide verification of its tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), the written agreement shall, at a minimum, include:

(i) The name and location of the summer camp(s);

(ii) Number of camps or sites;

(iii) Number of sessions to be offered during camping season;

(iv) Number of adults and children participating in the activities of the summer camp at each session;

(v) Total number of days meals will be served;

(vi) Total number of meals to be served daily;

(vii) Assurance that tax exempt status will be maintained;

(viii) Indication of whether the summer camp(s) will employ the services of a food service management company;

(ix) Assurance that a brochure or public announcement of open admission policy will be provided and that the summer camp agrees to maintain racial/ethnic data;

(x) Assurance that a physical inventory will be conducted and reconciled at the end of the camping session; and

(xi) Assurance that any excess inventory will, at the distributing agency's option, be returned to the distributing agency for redonation or transferred in accordance with § 250.13(a)(1).

(2) Distributing agencies shall distribute donated foods only after determining that the number of adults participating in camp activities, as compared with the number of children 18 years of age and under, is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 19 years of age and over, including program directors, counselors and others who engage in recreational, educational, and direct administrative functions, are to be considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance or similar support functions are not considered as adults participating in summer camp activities. In addition, persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(3) Distributing agencies shall authorize the transfer or redonation of all donated foods remaining in summer camps at the end of the camping season in accordance with § 250.13 (a) or (g) respectively.

(4) Nonprofit summer camps for children may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities and value of donated foods.* Distribution of donated food to eligible summer camps shall be made on the basis of the average number of meals to be served daily to children as evidence by the most recent written caseload factor information contained in the agreement.

(c) *Types of donated foods authorized for donation.* Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

§ 250.41 Charitable institutions.

(a) *Distribution.* (1) The distributing agency shall distribute donated food only to those charitable institutions which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement, the charitable institution shall provide verification of the institution's tax exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include:

(i) The name and location of the charitable institution;

(ii) Total number of days meals will be served;

(iii) Average daily number of participants;

(iv) Total number of meals by type to be served daily to needy persons;

(v) Data that shows the number of needy persons receiving benefits under another means-tested program or financial data that show the total annual amount of funds received by the institution that are derived, respectively, from (A) subsidized income and (B) nonsubsidized income. For the purpose of this Section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax exempt contributions which are provided for the care of participants which the institution had determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made on behalf of participants by persons legally responsible for their support;

(vi) Indication of whether the charitable institution will employ the services of a food service management company to conduct its food service operations;

(vii) Assurance that proper inventory controls will be maintained; and

(viii) Assurance that all reports will be submitted as required by the distributing agency.

(2) Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent that needy persons are served, if they conduct rehabilitation programs that are:

(i) Available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates; and

(ii) Of sufficient scope to permit participation for a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates.

Prior to entering into an agreement for donation of foods to an adult correctional institution, the distributing agency shall require the institution's director or other repsonsible official to provide a written statement certifying that the institution conducts such rehabilitation programs. The statement shall be reviewed annually and maintained as part of the agreement.

(3) Charitable institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities of donated foods.* Distribution of donated foods to eligible charitable institutions shall be made on the basis of the average number of meals served daily to needy persons. To determine the number of needy persons being served, the distributing agency

shall determine the proportion of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income (as defined in paragraph (a)(1) of this section) and multiplying that number by the average daily number of participants as required in § 250.41(a)(1)(v), or by simply counting the number of participants that receive benefits under another a means-tested program. The distributing agency shall use the income and average daily participation figures reflected in the agreement in determining the number of needy persons being served by the institution in accordance with the above formula. Income and participation figures shall be based on the institution's records for the previous year. The distributing agency shall obtain updated pertinent information by September 30 of each fiscal year.

(c) *Types of donated foods authorized for donation.* Charitable institutions are eligible to receive donated foods under section 416, section 32, section 4(a), and section 709.

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§ 250.42 Nutrition programs for the elderly.

(a) *Distribution.* Distributing agencies shall distribute donated foods only to nutrition programs for the elderly which have entered into an agreement for donation of commodities in accordance with § 250.12(b). Food service management companies may be employed to conduct food service operations in accordance with § 250.12(c).

(b) *Quantities and value of donated foods.* (1) *Quantities.* Distribution of donated foods to nutrition programs for the elderly shall be based on the level of assistance per meal as required by the Older Americans Act of 1965, as amended, and on the number of eligible meals served within the State as evidenced by written caseload factor information provided by the State Agency on Aging.

(2) *Value.* (i) For the fiscal years 1986 through 1991, the quantity of donated foods to be made available to each State Agency on Aging for distribution to nutrition programs for the elderly shall be valued at not less than 56.76 cents for each meal which such State Agency on Aging, in accordance with regulations and guidelines authorized by the Commissioner on Aging, United States Department of Health and Human Services, reports as having been served or, where necessary, estimates will be served within the State or to Indian Tribal Organizations during the year: *Provided, however,* That:

(A) This quantity will be reduced to the extent that a State Agency on Aging elects to receive cash in lieu of donated foods in accordance with paragraph (c) of this section and

(B) The quantity of donated foods to be provided to any State Agency on Aging for any fiscal year shall not be adjusted on the basis of meal reports or estimates submitted after July 1 of such fiscal year.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, in any fiscal year in which compliance with paragraph (b)(2)(i) of this section costs more than the amounts authorized to be appropriated under the Older Americans Act of 1965, as amended for that fiscal year, the Secretary shall reduce the cents per meal level determined pursuant to paragraph (b)(2)(i) of this section for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year. If such action is necessary, the per meal level will be reduced uniformly for each meal served during that fiscal year.

(c) *Cash in lieu of donated foods.* (1) Any State Agency on Aging may, for the purposes of the programs authorized by Titles III and VI of the Older Americans Act of 1965, as amended, elect to receive cash payments in lieu of all or any portion of the donated foods that it would otherwise receive under paragraph (b) of this section during any fiscal year.

(2) When a State Agency on Aging elects to receive cash payments in lieu of donated foods, that election shall be binding on the State Agency on Aging for the entire fiscal year to which it pertains, and FNS shall make cash payments to the State Agency on Aging equivalent in value to the donated foods that would otherwise have been provided. Cash payments shall be made for each fiscal quarter by means of Letters of Credit issued by FNS through the appropriate U.S. Treasury Regional Disbursing Office or, where applicable, by means of U.S. Treasury checks, based on the best data available to FNS as to the number of meals to be served by nutrition programs for the elderly administered by each State Agency on Aging during that fiscal quarter.

(3) In instances when it is necessary to reduce the annual level of assistance specified in paragraph (b)(2)(i) of this section, the level will be reduced in accordance with paragraph (b)(2)(ii) of this section. Once it has been established that the reduced per meal level will be sufficient to avoid any further adjustment, any remaining funds (up to the level of assistance specified in paragraph (b)(2)(i) of this section) will be disbursed so that each State will receive an equal amount on a per meal basis.

(4) To be eligible for reimbursement by FNS, claims for cash payment for meals served by nutrition programs for the elderly shall be submitted by State Agencies on Aging and Indian Tribal Organizations no later than 90 days following the close of the Federal fiscal quarter for which payment is claimed.

(5) The State Agency on Aging desiring to receive funds under this paragraph shall enter into a written agreement with FNS pursuant to § 250.12(a) to:

(i) Promptly and equitably disburse any cash it receives in lieu of donated foods to nutrition programs for the elderly after consideration of the needs of such programs and the availability of other resources, including any donated foods available under paragraph (b) of this section;

(ii) Establish such procedures as may be necessary to ensure that the cash disbursements are used by nutrition programs for the elderly solely for the purpose of purchasing U.S. agricultural commodities and other foods of U.S. origin for their food service operations;

(iii) Maintain and retain for 3 years from the close of the Federal fiscal year to which they pertain complete and accurate records of:

(A) All amounts received and disbursed under paragraph (c) of this section and

(B) The manner in which consideration was given to the needs and resources as required by paragraph (c)(5)(i) of this section; and

(iv) Permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time.

(6) Funds provided under paragraph (c) of this section shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(d) *Types of donated foods authorized for donation.* Nutrition programs for the elderly are eligible to receive donated foods under section 416, section 32, section 311, section 709, and section 14.

§ 250.43 Disaster organizations.

(a) *Eligibility.* In instances in which the President has declared a major disaster or emergency pursuant to section 301 of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5141) and the Secretary has determined that as a result of the major disaster or emergency low-income households are

unable to purchase adequate amounts of nutritious food, disaster organizations may be eligible to receive donated foods for congregate meal service or household distribution to disaster victims. Disaster organizations shall remain eligible for disaster assistance for as long as the Secretary determines necessary, taking into consideration the consequences of the major disaster or emergency on the earning power of the disaster victims; *Except*, that in areas where the Food Stamp Program is in operation, donated foods may be distributed for household use only so long as the Secretary finds that the commercial channels of trade have been disrupted because of a major disaster or emergency. Prior to providing donated foods to disaster organizations, the distributing agency shall require the disaster organization to make application for the receipt and distribution of donated foods in accordance with paragraphs (b) and (c) of this section. Such applications shall be confirmed in writing and maintained in accordance with the recordkeeping requirements of this part.

(b) *Distribution of donated foods for use in providing congregate meal service.* (1) In order to obtain donated foods for use in providing congregate meal service, disaster organizations shall request approval from the appropriate distributing agency, giving the following information to the extent possible:

(i) Description of major disaster or emergency situation;

(ii) Number of people requiring meals and congregate meal service period;

(iii) Quantity and types of food needed for congregate meal service; and

(iv) Number and location of sites providing congregate meal service.

(2) Following its approval of the request for donated foods, the distributing agency is authorized and shall make appropriate donated foods available from any sources within the State to the disaster organization and within 24 hours shall report to the appropriate FNSRO the information listed in paragraph (b)(1) of this section.

(c) *Household distribution.* In order to obtain donated foods for household distribution in areas served by the Food Stamp Program when commercial food distribution channels are disrupted, the distributing agency shall request prior approval by the appropriate FNSRO. In the request, the distributing agency shall cite the following information:

(i) Description of major disaster or emergency situation;

(ii) Number of households affected;

(iii) Anticipated distribution period;

(iv) Method of distribution available; and

(v) Quantity and types of food needed for distribution.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible disaster organizations based on the caseload factor information provided by the disaster organization.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing major disaster or other emergency food assistance under this Part are eligible to receive donated foods under section 416, section 32, section 709, section 4(a) and sections 409 and 410 of the Disaster Relief Act of 1974 (42 U.S.C. 5181–82), as amended.

(f) *Summary report.* Within 30 days following termination of the disaster assistance, the distributing agency shall provide a summary report to the appropriate FNSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* To the extent donated foods are available, FNS will replace donated foods used from the States' stocks for major disaster and emergency assistance. The distributing agency shall request the replacement of foods used for major disaster and other emergency food assistance, in writing to FNSRO, no later than 30 days following termination of the disaster assistance.

§ 250.44 Special group food assistance programs.

In situations of distress in which needs for food assistance cannot be met under other provisions of this part, a distributing agency may, upon request to and approval by the Secretary, distribute donated foods to any institution, or to any association of persons engaged in charitable activities, for use in conducting special group-feeding programs on a temporary basis for persons in need of such food assistance. Such distributions shall not exceed 30 days. The distributing agency, and any such institution or association, shall conduct any distribution under this Section in accordance with such instructions as the Secretary may specify, and any such institution or association shall give to the distributing agency an assurance that feeding programs will be conducted in accordance with the instructions.

§ 250.45 Commodity Supplemental Food Program.

(a) *Distribution.* The distributing agency shall distribute donated foods to the State agency which is designated by the State to administer the Commodity Supplemental Food Program for that State and which has entered into a written agreement with the Department for the administration of that program in accordance with 7 CFR Part 247, the regulations for that program. The State agency administering the Commodity Supplemental Food Program shall distribute donated foods to local agencies for use by eligible recipients in accordance with the provisions of 7 CFR Part 247 and with the provisions of this Part, and may enter into an agreement with the distributing agency for use of the distributing agency's facilities for distribution.

(b) *Quantities of donated foods.* Distribution of donated foods to the designated State agencies for the Commodity Supplemental Food Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies distributing donated foods through the Commodity Supplemental Food Program are eligible to receive such foods under section 32, section 416, section 709 and section 4(a).

§ 250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.

(a) *Distribution.* The distributing agency shall make donated foods available for distribution to households in the Trust Territory of the Pacific Islands by those welfare agencies which certify households in accordance with a plan of operation approved by FNS, as required by paragraph (d) of this section. Distribution of donated foods to households shall be made in accordance with the approved plan of operation.

(b) *Quantities and value of donated foods.* Distribution of donated foods shall be based on the actual number of households in need of food assistance.

(c) *Types of donated foods authorized for donation.* Agencies which make distribution to needy persons are eligible to receive foods under section 416, section 32, section 709 and section 4(a).

(d) *Plan of operation.* Prior to making distribution to agencies or households, the distributing agency shall submit a plan of operation for approval by the appropriate FNSRO. Such plans shall incorporate the procedures and methods to be used in certifying households in need of food assistance, in making distribution to households, and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of

operation of the distributing agency shall be made without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. The distributing agency shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the plan of operation. At a minimum, the plan shall include the following:

(1) The name of the public welfare agency or agencies which will be responsible for certification of households;

(2) The manner in which donated food will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing;

(3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards establishes by the distributing agency for use by welfare agencies in determining the eligibility of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standard is required or approved by FNS;

(4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification;

(5) Provisions for periodically reviewing the certifications of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period;

(6) Provisions for identifying each person who has been designated to receive donated foods for a household;

(7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination against recipients of donated foods because of race, color, national origin, sex, age or handicap;

(8) Assurance that:

(i) Citizenship or durational residence requirements shall not be imposed as a condition of eligibility and

(ii) Recipients shall not be required to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose;

(9) The manner in which the distributing agency plans to supervise the program; and

(10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (third edition).

(e) *Operating expense funds*—(1) *Application for funds.* To receive administrative funds, the distributing agency shall submit Form AD–623, "Application for Federal Assistance," to the appropriate FNSRO at least three months prior to the beginning of the Federal fiscal year. Approval of the application by FNS shall be a prerequisite to payment of any funds to the distributing agency. The Department will make payments to the distributing agency to assist it in meeting operating expenses incurred in administering food distribution for needy persons.

(2) *Availability of funds.* FNS will review and evaluate the budget information submitted by the distributing agency in relationship to the distributing agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures are reasonable and justified. FNS will give written notification to the distributing agency of:

(i) Its approval or disapproval of any or all of the estimated expenditures; and

(ii) The amount of funds which will be made available.

(3) *Payment of funds.* Payments shall be made to the distributing agency through a Letter of Credit or an advance by Treasury Check. These payments will be issued in accordance with Treasury Department procedures, Treasury Circular No. 1075 and through the appropriate Treasury Regional Disbursing Office (RDO).

(4) *Use of funds.* The distributing agency shall make every reasonable effort to ensure the availability of a food distribution program for needy persons in households and shall assign priority in the use of any funds received under this Section to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to needy households. Such funds may be used for any costs which are not disallowed under Office of Management and Budget Circular A–87 (a copy of which may be obtained from FNS) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefore is claimed or made available from any other Federal source.

(5) *Accounting for funds.* The distributing agency which receives administrative funds under this Section shall establish and maintain an effective system of fiscal control and accounting procedures. The accounting procedures maintained by the distributing agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the distributing agency. Any budget revisions by the distributing agency which require the transfer of funds from an FNS approved cost category to another shall be in accordance with the budget revision procedures set forth in 7 CFR Part 3015 and shall be approved by FNS prior to any transfer of funds.

(6) *Return, reduction and reallocation of funds.* (i) FNS may require the distributing agency to return prior to the end of the Federal fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to the distributing agency if FNS determines that:

(A) The distributing agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this Part;

(B) The amount of funds which the distributing agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of program needs; or

(C) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purposes of this Part.

(ii) The distributing agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under paragraph (e) of this section which are obligated at that time.

(7) *Financial reports.* The distributing agency shall submit quarterly and annual reports to FNS on Form SF–269 concerning the obligations, expenditure and status of funds received under this

Section. In addition, the distributing agency receiving funds under paragraph (e) of this section shall submit any other reports in such form as may be required from time to time by the Department.

(f) *Records, reports and audits.* The distributing agency shall:

(1) Maintain and retain for three years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under paragraph (e) of this section,

(2) Keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this Section, and

(3) Permit representatives of the Department and of a General Accounting Office of the United States to inspect, audit and copy such records and accounts at any reasonable time.

§ 250.47 Food Distribution Program on Indian Reservations.

Distribution. (a) Distributing agencies which operate a food distribution program on Indian reservation shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), §§ 250.14 and 250.15 to the extent that these provisions are not inconsistent with the regulations cited in paragraph (b) of this section. (b) In addition to complying with the provisions identified in paragraph (a) of this section, distributing agencies shall also comply with the provisions set forth in Part 253, Food Distribution Program on Indian Reservations or Part 254, Food Distribution Program in Oklahoma, as applicable.

§ 250.48 School food authorities and commodity schools.

(a) *Distribution.* School food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter or the School Breakfast Program under Part 220 of this chapter are eligible to receive donated foods. The distributing agency shall distribute donated foods only to those school food authorities whose eligibility for participation in the program has been confirmed in writing by the State agency or FNSRO administering the applicable program. Lists of participating school food authorities which have been provided to the distributing agency by the administering State agency or FNSRO may serve as written confirmation of eligibility. School food authorities may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Parts 210 and 220 of this chapter.

(b) *Quantities and value of donated foods.*—(1) *Quantities.* Distribution of donated foods to school food authorities which participate in the National School Lunch Program or as commodity school under Part 210 shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the National School Lunch Program under Part 210 of this chapter, as evidenced by the most recent estimate of the average daily numbers of meals which must be provided by the administering State agency or FNSRO to the distributing agencies as early as practicable each school year but not later than September 1, as revised to reflect additions or deletions of eligible schools and any necessary adjustment in the number of meals served.

(2) *Value.* (i) For each school year, the national average value of donated foods to be made available to States for distribution to school food authorities participating in the National School Lunch Program (7 CFR Part 210), or where applicable, cash payments in lieu thereof, shall not be less than 11 cents for each lunch and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by Section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective as of the beginning of each school year. Not less than 75 percent of the food distribution assistance shall be in the form of donated foods.

(ii) For each school year, the national average value of donated foods to be provided to States for distribution to commodity schools shall not be less than the amount specified in paragraph (b)(2)(i) of this section, plus an amount equal to the national average payment established under section 4 of the National School Lunch Act, as amended, for each lunch served by such schools: *Provided, however:* That this amount shall be reduced to the extent that FNS provides up to 5 cents per lunch of this value in cash in lieu of donated foods for donated food processing and handling expenses on behalf of such school food authorities in accordance with Part 240 of this chapter.

(c) *Cash in lieu of donated foods for schools.* Where a State has phased out its food distribution facilities prior to July 1, 1974, such State may, in accordance with Part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in school lunch programs which participate in the National School Lunch Program under Part 210 of this chapter.

(d) *Types of donated foods authorized for donation.* School food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. School food authorities which participate in the School Breakfast Program under Part 220 are eligible to receive donated foods under section 416, section 32, section 709 and section 14.

(e) *Refusal of donated foods by school food authorities.* (1) Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent that they are available during the school year: *Provided, however:* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusal of more than 20 percent of such value is feasible and practical. Prior to making distribution to school food authorities, distributing agencies shall notify each school food authority of its right to refuse delivery and to receive other donated foods, if available, in lieu of those refused. Notification of donated food refusal rights shall be provided by means of a letter or by an addendum to the agreement required by § 250.12(b) to each school food authority prior to the beginning of each school year.

(2) If the distributing agency demonstrates on the basis of existing records that it is maintaining an effective offer-and-acceptance system as defined in § 250.3, there can be no refusal of donated foods as provided in paragraph (e)(1) of this section.

(f) *Use of donated foods in home economics courses.* School food authorities receiving donated foods under this Part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. Home economics includes classes in general home economics, food

purchases, nutrition, food preparation, cooking, child care and health.

§ 250.49 Nonresidential child care institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those nonresidential child care institutions whose eligibility for participation in Child Care Food Program has been confirmed in writing by the State agency of FNSRO administering the program, where applicable. Lists of participating nonresidential child care institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Nonresidential child care institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Part 226 of this chapter.

(b) *Quantities and value of donated foods.* (1) *Quantities.* Distribution of donated foods to nonresidential child care institutions shall be made on the basis of the average daily number of lunches and suppers to be served which meet the meal-type requirements prescribed in the regulations for the Child Care Food Program under Part 226 of this chapter, as evidenced by the most recent written caseload factor information which must be provided by the administering State agency or FNSRO to the distributing agency not later than June 1 each year.

(2) *Value.* For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu thereof, shall not be less than 11 cents for each lunch and supper and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for food used in schools and institutions as prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective at the beginning of each school year.

(c) *Cash in lieu of donated foods.* In accordance with Part 240 of this chapter, State agencies may elect to receive cash payments in lieu of donated foods for use by institutions which participate in the Child Care Food Program under Part 226 of this chapter.

(d) *Types of donated foods authorized for donations.* Nonresidential child care institutions which participate in the Child Care Food Program under Part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

§ 250.50 Service institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those service institutions whose eligibility to receive donated foods for use in the Summer Food Service Program for Children under Part 225 of this chapter has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating service institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility.

(b) *Quantities and value of donated foods.* Distribution of donated foods to service institutions shall be made on the basis of the average daily number of meals by type to be served which meet the meal-type requirements prescribed in the regulations for the Summer Food Service Program for Children under Part 225 of this chapter as evidenced by the most recent written caseload factor information which must be provided by the State agency or FNSRO administering the program to the distributing agency by June 1 of each year.

(c) *Types of donated foods authorized for donation.* Service institutions which participate in the Summer Food Service Program for Children under Part 225 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, and section 14.

§ 250.51 Special Supplemental Food Program for Women, Infants and Children.

(a) *Distribution.* At the request of the State agency responsible for administering the Special Supplemental Food Program for Women, Infants and Children (WIC Program) under part 246 of this chapter and with approval of the Department, donated foods may be made available for distribution to program participants. In instances when donated foods are made available, State agencies shall pay the Department using funds allocated to the State for the WIC Program for those donated foods which are provided to participants as part of the food package. Donated foods which are provided to participants in addition to the quantities authorized for the food package will be made available to the State agency free of charge.

(b) *Quantities and value of donated foods.* Distribution of donated foods to State agencies for the WIC Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies participating in the WIC Program under Part 246 of this chapter are eligible to receive donated foods under section 416 and section 32.

Subpart E—Where to Obtain Information

§ 250.60 Program information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

(a) Northeast Region, Food and Nutrition Service, USDA, 10 Causeway Street, Boston, Massachusetts 02222–1065 for the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

(b) Mid-Atlantic Region, Food and Nutrition Service, USDA, Mercer Corporate Park, Corporate Blvd., CN 02150, Trenton, New Jersey 08650, for the following States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands and West Virginia.

(c) Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street, NW, Atlanta, Georgia 30367, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

(d) Midwest Region, Food and Nutrition Service, USDA, 50 East Washington Street, Chicago, Illinois 60602, for the following States: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

(e) Mountain Plains Region, Food and Nutrition Service, USDA, 2420 West 26th Avenue, Room 430–D, Denver, Colorado 80211, for the following States: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

(f) Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242, for the following States: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

(g) Western Region, Food and Nutrition Service, USDA, 550 Kearney Street, Room 400, San Francisco, California 94108 for the following States: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory and Washington.

Dated: May 25, 1988.

Anna Kondratas,

Administrator.

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June 3, 1988

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 431, 435, 440, 442, and 483
Medicaid Program; Conditions for Intermediate Care Facilities for the Mentally Retarded; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 435, 440, 442, and 483

[BERC-266-F]

Medicaid Program; Conditions for Intermediate Care Facilities for the Mentally Retarded

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

ACTION: Final rule.

SUMMARY: This rule revises the format, location and content of the standards for intermediate care facilities for the mentally retarded and persons with related conditions (ICFs/MR). (The standards are those requirements that ICFs/MR must meet in order to participate in the Medicaid program). The new format will be that of "conditions of participation" and will make the regulations for ICFs/MR consistent with the organization of the Medicare and Medicaid regulations for skilled nursing facilities. The new location will be under a new Part 483, "Conditions of participation for long term care facilities". Revisions to the content of the regulations are designed to increase the focus on the provision of active treatment services for clients, clarify Federal requirements, and maintain essential client protections. The major outcome of these regulations will be to align Federal standards with contemporary care practices for residential care services for persons with mental retardation or other developmental disabilities. We also are making several technical changes and cross-references to achieve consistency with other existing regulations.

EFFECTIVE DATE: The regulations are effective on October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

I. Background

General

Section 1905(a)(15) of the Social Security Act (the Act) authorizes optional Medicaid coverage for services in intermediate care facilities (ICFs). These are facilities that provide health-related care to individuals who do not need the degree of care commonly provided in hospitals or skilled nursing facilities, but who do require care and services above the level of room and board that can only be made available to them through institutional facilities. Section 1905(d) of the Act indicates that the term "intermediate care facility services" may include services in a public institution for the mentally retarded or persons with related conditions (ICF/MR). (Private facilities may also participate as ICFs/MR.)

Fifty States and jurisdictions currently cover ICF care; 49 of these include ICF/MR care and serve over 154,000 individuals in over 3,600 ICFs/MR, ranging in size from 4 beds to almost 1,500 beds.

ICF/MR Standards—Current Regulations

Current standards for ICFs/MR are found at 42 CFR Part 442, Subpart G. These standards were published in 1974 and are based primarily on the 1971 voluntary standards of the Accreditation Council for Facilities for the Mentally Retarded (AC/FMR), now renamed the Accreditation Council on Services for People with Developmental Disabilities (ACDD). The standards are the requirements that ICFs/MR must meet in order to participate in the Medicaid program. They were developed on the assumption that they would be used for the most part in large, public institutions which served as the principal source of out of the home placement of persons with mental retardation at the time the standards were published. Since the early 1970s, litigation, legislation, research and technological advances have influenced the way in which clients are identified, assessed, and provided services. The size of institutions has steadily decreased and the provision of a broad spectrum of services to clients in community settings has expanded greatly in the last 10 years.

Despite these changes, the standards have not been significantly revised since they were originally published in 1974. On March 4, 1986, we published in the **Federal Register** (51 FR 7520) a proposed revision of the standards. The changes we proposed were designed to increase the focus on the provision of active treatment services to clients, clarify Federal requirements, maintain essential client protections, and to provide State survey agencies with a more accurate mechanism for assessing quality of care.

II. Provisions of the Proposed Regulations

We based our proposal, particularly the Active Treatment Services section of our proposed standards, primarily on the accreditation standards published in 1983 by the ACDD. We based our revisions on the following general principles:

- The standards should enable both the facility and monitoring agencies (State survey agencies and Federal reviewers) to form judgments about whether individuals needs are being properly assessed and appropriate interventions planned and delivered.
- The standards should be applicable to all of the various sizes of facilities that provide services to persons with mental retardation and should provide these facilities with greater flexibility in the administration of their programs.
- The standards should focus more on client and staff performance rather than on compliance with processes and paper requirements.
- The standards should provide for individual client protections, given the vulnerability and frequent isolation of many clients in ICFs/MR.

The major organizational and structural proposed revisions to the standards were as follows:

- We proposed to reorganize the standards into four major sections in order to eliminate duplicative language and provide the facilities and surveyors with a logical, accountable method of determining compliance. The four sections that we proposed were: administrative services; active treatment services; physical environment; and, safety and sanitation.
- We proposed revisions to much of the detailed language of the current standards to give facilities greater ability to administer their programs, while recognizing their widely varying sizes, locations and organizational structure. We proposed retaining appropriate detail in the areas of needed client protections.
- We proposed rewording much of the language contained in the current regulations to reflect contemporary terminology in the field of developmental disabilities. For example, we proposed to substitute the term "client" for "resident" throughout the standards.
- We proposed to retain necessary emphasis on health services, but included revisions that would reflect the wide diversity in health care delivery systems utilized by ICFs/MR.
- The proposed standards emphasized the development of the individual client in defining the active treatment process. We used the ACDD standards for active treatment as a guide and proposed to link professional qualifications and duties to the active treatment process.
- We proposed to clarify numerous existing standards that have created problems for providers and reviewers (for example, qualifications for the

qualified mental retardation professional, thermostatically controlled water faucets, self-administration of medications, and the application of State nursing home health and sanitation standards).

III. Discussion of Comments

We received 236 timely items of correspondence in response to the proposed notice. Comments were received from individuals, associations, State health departments and Medicaid providers of services (primarily, ICFs/MR). With few exceptions, HCFA's efforts to develop a performance based regulation were commended by commenters as a "step in the right direction". Yet, many of these same commenters offered suggestions that would have the effect of increasing the amount of prescriptive, process oriented requirements we sought to eliminate in the proposal. One commenter, representing a large number of small providers, noted that "we are particularly appreciative of efforts to offer more flexibility to service providers in the proposed rules, and it is with a sense of irony that we find we will be recommending a diminution of that flexibility * * *".

Our experiernce with the ICF/MR regulations, first published in 1974, has provided sufficient evidence of the failure of essentially prescriptive, process oriented regulations to work effectively in behalf of the developmental, health, social, and behavioral needs of clients. We remain committed to the principles on which we based the proposal and have rejected many of the suggestions that we think only "reload" prescriptive requirements that we sought to eliminate. Thus, our response to many comments in the following sections will say simply that we rejected them as being "too prescriptive". While we appreciate the thoughtfulness and sincerity of the commenters, we disagree with the rationale behind many of these suggestions. A summary of the comments and our responses to them, follows.

A. Condition of Participation Format

Comment: We requested comments on the issue of organizing these regulations into the condition of participation format. Approximately 50 commenters expressed views on the issue. Under such an approach, State agencies would survey for compliance with the conditions of participation. We note that a condition is often made up of several "standards". In order for the condition to be met, all or a majority of the standards must be met. Thus, a facility is found to meet *all* the conditions of participation, it would be eligible for Medicaid certification. If a facility meets all the conditions of participation, but has deficiencies in one or more of the standards comprising a condition of participation, it has up to 12 months to achieve compliance in conformity with a corrective plan of action (provided that the deficiencies do not immediately jeopardize the health and safety of the facility's clients, in which case the facility's certification must be terminated as set forth under § 442.117).

About two thirds of the commenters on this issue were in favor of the condition of participation format. Almost all of these commenters favored the condition format because they believed that it would lead to more enforceable requirements. However, many deplored the idea that a facility could operate for 12 months with standard level deficiencies simply by having a plan of correction in existence.

The other third of the commenters on this issue opposed the condition of participation format because they believe that the structure of the condition format is such that the change for deficiencies to result in adverse action is increased. Thus, the commenters believe the condition format would sharply increase the facility's vulnerability to adverse action. They asserted that since there is no empirical basis for establishing minimum thresholds of compliance within any of the suggested conditions, the decision of the surveyor would be no less subjective under the condition of participation than under the standards format, but the potential penalty would be greater.

Response: We have adopted the condition of participation format in these final regulations. While we appreciate the view that an empirical basis for deciding when a standard or a condition is out of compliance is conceptually possible, we believe that approach could lead to an even less desirable circumstance. If minimum requirements for taking adverse action were established, very little professional judgment would be necessary and compliance decisions could be made without regard to the human factors or circumstances of the clients. For example, a requirement that 25 percent of the clients meet 40 percent of the objectives established in their individual plans of care, does not take into consideration the fact that the failed objectives may not have been the most important for those clients. Judgment of the quality of human services will always be to some extent subjective. While we will continue to strive to develop clear and precise regulations and survey techniques, we always will need to rely heavily upon surveyors who can make judgments about the human factors or circumstances relative to a consensus standard established as administrative law.

The condition of participation format, which originated in the Medicare program, is a format structured to assure that facilities that do not meet at least minimum requirements do not participate in the program. The condition of participation format enables us to define the critical major requirements for participation. If the facility is performing so poorly as to warrant a determination that one or more conditions of participation are not met, then we believe the facility does not meet the requirements for participation in the ICF/MR program, namely that the facility is providing needed services in a safe and healthful environment.

In developing the conditions of participation format, we decided that the conditions for ICFs/MR would be located most appropriately in 42 CFR Subchapter E, "Standards and Certification". Subchapter E currently includes the conditions of participation for hospitals and specialized providers. In this final rule, we have established under Subchapter E a new Part 483, "Conditions of Participation for Long Term Care Facilities". The outline of the condition of participation format that we have adopted in this final rule follows. In the outline, we have indicated which sections of the proposed rule were used in establishing the conditions.

§ 483.400 Basis and purpose.
§ 483.410 Condition of Participation: Governing body and management
(a) Standard: Governing body (proposed § 442.412)
(b) Standard: Compliance with Federal, State and local laws (proposed § 442.416)
(c) Standard: Client records (proposed § 442.432)
(d) Standard: Provision of needed services (proposed § 442.418)
§ 483.420 Condition of Participation: Client protections
(a) Standard: Protection of clients' rights (proposed § 442.401)
(b) Standard: Client finances (proposed § 442.410)
(c) Standard: Communication with clients, parents and guardians (proposed 442.414)
(d) Standard: Staff treatment of clients (proposed § 442.424)
§ 483.430 Condition of Participation: Facility staffing
(a) Standard: Qualified mental retardation professional (proposed § 442.450(a))
(b) Standard: Professional program services (proposed § 442.460)

(c) Standard: Facility staffing (proposed § 442.426)
(d) Standard: Direct care staff (proposed § 442.428)
(e) Standard: Staff training program (proposed § 442.430)
§ 483.440 Condition of Participation: Active treatment services
(a) Standard: Active treatment (proposed § 442.440)
(b) Standard: Admissions, transfers and discharge (proposed § 442.442)
(c) Standard: Individual program plan (proposed § 442.444)
(d) Standard: Program implementation (proposed § 442.446)
(e) Standard: Program documentation (proposed § 442.448)
(f) Standard: Program monitoring and change (proposed § 442.450(b), (c), (d) and (e))
§ 483.450 Condition of Participation: Client behavior and facility practices
(a) Standard: Facility practices—conduct toward clients (proposed § 442.452 Behavior management policies and procedures)
(b) Standard: Management of inappropriate client behavior (proposed § 442.454 Behavior modification programs)
(c) Standard: Time-out rooms (parts of proposed § 442.452, Behavior management, and proposed § 442.454, Behavior modification)
(d) Standard: Physical restraints (proposed § 442.456)
(e) Standard: Drug usage (proposed § 442.458)
§ 483.460 Condition of Participation: Health Care Services
(a) Standard: Physician services (proposed § 442.462)
(b) Standard: Physician participation in the individual program plan (proposed §§ 442.464 and 442.466)
(c) Standard: Nursing services (proposed § 442.468)
(d) Standard: Nursing staff (proposed § 442.470)
(e) Standard: Dental services (proposed § 442.472)
(f) Standard: Comprehensive dental diagnostic services (proposed § 442.474)
(g) Standard: Comprehensive dental treatment (proposed § 442.476)
(h) Standard: Documentation of dental services (proposed § 442.478)
(i) Standard: Pharmacy services (proposed § 442.480)
(j) Standard: Drug regimen review (proposed § 442.482)
(k) Standard: Drug administration (proposed § 442.484)
(l) Standard: Storage and recordkeeping (proposed § 442.486)
(m) Standard: Labeling (proposed § 442.488)
(n) Standard: Laboratory services (proposed § 442.489)
§ 483.470 Condition of Participation: Physical environment
(a) Standard: Client living environment (proposed § 442.500)
(b) Standard: Client bedrooms (proposed § 442.502)
(c) Standard: Storage space in bedrooms (proposed § 442.504)
(d) Standard: Client bathrooms (proposed § 442.506)
(e) Standard: Heating and ventilation (proposed § 442.508)
(f) Standard: Floors (proposed § 442.510)
(g) Standard: Space and equipment (proposed § 442.512)
(h) Standard: Emergency plans and procedure (proposed § 442.550)
(i) Standard: Evacuation drills (proposed § 442.552)
(j) Standard: Fire protection (proposed § 442.554)
(k) Standard: Paint (proposed § 442.556)
(l) Standard: Infection control (proposed § 442.436)
§ 483.480 Condition of Participation: Dietetic services
(a) Standard: Food and nutrition services (proposed § 442.558)
(b) Standard: Meal services (proposed § 442.560)
(c) Standard: Menus (proposed § 442.562)
(d) Standard: Dining areas and services (proposed § 442.564)

B. Basis and Purpose (Proposed § 442.400; Final § 483.400)

Comment: One commenter objected to the word "facility" in the statement that describes the Secretary's authority to prescribe standards for "intermediate care facility services". The commenter thought the word facility focused too much on physical plant issues rather than on client services.

Response: In this context, the word facility is used as it appears in the statute (section 1905(d) of the Act) that establishes the ICF/MR benefit under the Medicaid program. The context in which it appears makes it clear that it is "facility services" that are covered, and it is clearly services that are emphasized in these regulations.

Comment: Several commenters wanted to maintain the provisions of the current regulations at § 442.402 that require a facility to establish philosophy, objectives and goals, and § 442.407 that requires a facility to have policy and procedure manuals.

Response: In the proposal and in these final regulations, we have emphasized the outcomes of care for the client. The facility's philosophy, policies, and procedures are essential to its successful operation. However, we intend to measure facility performance, and this is what we expect to see reflected in client outcomes.

C. Protection of Clients Rights (Proposed § 442.401; Final § 483.420(a))

Comment: Several commenters recommended that paragraphs (i), (j) and (k) of the proposed § 442.401 concerning the protection of client rights be modified by replacing the word "permit" with the phrase "ensure that". The commenters believed that this would emphasize that the rights discussed in these paragraphs are basic and that the facility does not have the right to deny them as the word "permit" suggests.

Response: We accept this recommendation and have revised the regulations accordingly.

Comment: Commenters expressed a variety of opinions regarding the absence in the proposed regulations of the existing requirement at § 442.405 that states that a qualified mental retardation professional may determine if a client is incapable of understanding his or her rights. Many commenters also suggested that the proposed § 442.401(a) that lists the individuals a facility must inform of clients' rights, be amended to include a legal advocate as one who must be informed. Similarly, others stated that it should be mandated that when a client is adjudicated incompetent, a legal guardian be appointed. Still others wanted to expand the proposed section by adding a new subsection detailing clients' rights in obtaining a legal advocate.

Response: The reason that the proposal and this final rule delete the authorization for a qualified mental retardation professional to determine a client's competency is that this determination involves a judicial process that goes beyond a clinical process. With respect to the issue of informing a legal advocate of a client's rights, there is nothing in the proposal or the final rule to preclude notification. Regarding the mandating of a legal guardian in the case of incompetency, this is a matter traditionally regulated under State laws. Finally, neither the proposal nor the final rule preclude a facility from obtaining a legal advocate for a client, but we have no authority to mandate his or her appointment.

Comment: Several commenters asked whether the proposed § 442.4019b), which would require a facility to inform each client, parent or guardian of the attendant risks of treatment, referred to medical treatment exclusively or other modalities as well.

Response: The term "attendant risks of treatment" refers to all treatment.

Comment: Two commenters asked if there was conflict between the proposed § 442.401(b), which would establish a client's right to refuse treatment, and the facility's mandate to provide active treatment.

Response: We will explain in interpretive guidelines that a client refusing a particular treatment must be offered acceptable alternatives to the treatment being refused if acceptable alternatives are available (for example,

drug therapy). If the client refuses the alternative treatment as well, or if no alternative exists to the treatment that was refused, the facility must consider whether it can continue to treat the client consistent with these regulations.

Comment: Commenters suggested that the proposed § 442.401(i) that would establish a client's right to send and receive mail be modified to indicate that a client has a right to send and receive unopened mail.

Response: We agree and have modified the regulations to indicate that a client has this right.

Comment: One commenter suggested that the proposed § 442.401(g) that would require a facility to provide each client with the opportunity for personal privacy be expanded to indicate the locations where privacy is a client right.

Response: We believe this is conceptually self-evident. We cannot enumerate all of the types of living environments that lend themselves to client privacy, so we cannot practically comply with this recommendation. However, we have modified the regulations to emphasize the need for privacy during treatment procedures and care of the personal needs of the client.

D. Client Finances (Proposed § 442.410; Final § 483.420(b))

Comment: Most commenters on the requirement to keep a full and complete accounting of clients personal funds were concerned that a minutely detailed accounting by the facility should not be required. Clients' personal funds include funds for "incidental" expenses (such as ice cream and bus fares), funds that a capable client handles without assistance, funds dispensed to a client under a program to train the client in money management, and funds that are not entrusted to the facility (for example, that are paid directly to the client's representative payee).

Response: The Conference Report (H.R. Rep. No. 673, 95th Cong., 1st Sess. 49 (1977)) on the bill that enacted section 1861(j)(14) of the Act, the provision that requires skilled nursing facilities to account for patients' funds, states that: 'Such system must provide for separate and discrete accounting for each patient with a complete accounting of income and expenditures.' The requirement for ICFs to account for patients' funds was incorporated into the Medicaid statute at section 1905(c) of the Act, by section 8(a) of Pub. L. 95–292.

However, we agree with the commenters who maintain that the facility should not be held responsible for personal funds used for incidental expenses or "pocket money". Consequently, we have restated the requirement, now at § 483.420(b)(1)(i) to clarify that the facility is only responsible for the personal funds of which it has custody on behalf of the client.

Comment: Some commenters suggested that specific emphasis be placed on the facility's responsibility to encourage and teach clients to manage their own funds to the extent possible.

Response: We believe that the need to encourage and train clients in managing their own funds to the extent possible was reflected in the proposed § 442.401(d) that would require the facility to allow each client to manage his or her own financial affairs and to teach him or her to do so to the extent of the client's capabilities. Consequently, we have made no change to the proposed requirement in this final rule. We note that the requirement is located at § 483.420(a)(4) in this final rule.

Comment: Other commenters recommended that we retain the requirement in current regulations at § 442.404(a)(4) that the facility inform the client in writing of available services and any applicable charges.

Response: The ICF/MR is required to provide its clients with the package of services specified in these regulations. Further, Medicaid regulations at § 447.15 provide that, except for any recipient cost-sharing requirements specified by the State plan, a Medicaid provider must accept the amount paid by the State Medicaid program as payment in full. Thus, the facility is effectively precluded from charging the client for services that it provides as part of the required ICF/MR package, making a list of applicable charges unnecessary.

Comment: Concerning the proposed § 442.410(a), which would preclude the commingling of a client's funds with any funds other than those of another client, two commenters suggested the commingling of clients' funds in a shared trust fund, noting that small, individual client savings accounts can be depleted by bank charges. However, they added that it would be impossible to maintain individual running accounts of interest accrued to each client in a shared account.

Response: The proposed rule that would prohibit the commingling of clients' funds with facility funds is required by section 1905(c)(4) of the Act, which incorporates section 1861(j)(14) of the Act. Section 1861(j)(14) of the Act precludes the commingling of clients' funds in skilled nursing facilities that are approved for Medicare participation. Thus, under section 1905(c)(4), this provision applies to ICFs. There is nothing in the Act that requires the facility to maintain clients' personal funds in financial institutions in accounts separate from other client accounts, or to maintain these funds in interest bearing accounts (although it would ordinarily be prudent to do so). However, if the facility elects to pool clients' funds in an interest bearing account, it is expected to know the interest separately accrued by each client, as part of its required accounting of funds.

Comment: One commenter questioned the need for any commingling of clients' funds, and opposed any system that could allow personal funds to lose their individual identity, or allow access to them without consent of the client or guardian. Another suggested allowing combined funds within a shared bank account but mandatory, separate accounting cost centers for each client. Still another commenter noted a potential conflict between Federal law and a particular State's law requiring interest from a patient's trust account to be deposited into a common recreational fund account.

Response: Section 1905(c)(4) of the Act, the proposed regulations, and these final regulations neither require nor prohibit the commingling of a client's funds with those of other clients in accounts in financial institutions, nor do they require that funds, when deposited, be deposited in interest bearing accounts. With regard to the potential conflict between State and Federal law, we would have to examine the specifics of the State law to determine whether, in fact, it conflicts with the Federal Medicaid statute.

Comment: In regard to the proposed § 442.410(b), which would require a written financial record that includes management of all funds handled by the facility on the client's behalf, one commenter suggested including a signed statement that the facility management of funds is done at the client's option, and another expressed support for the requirement for a written financial record.

Response: We believe the issue of a client authorizing the facility to manage his or her funds was already adequately addressed in the proposed § 442.401(d) concerning clients' rights. That section would require that the client be allowed to manage his or her own financial affairs as much as possible, and implied that facility management of the client's funds is possible only if the client elects it. We have made no changes to this provision that now is located at § 483.420(a)(4). We believe that the requirement in the introductory

paragraph of the proposed § 442.410, for a full and complete accounting of funds, by its nature necessitates maintenance of a written record. Therefore, we believe that the language in the proposed § 442.410(b) that would specifically require a written record is unnecessary, and we have deleted it.

Comment: With respect to the proposed provision regarding availability of the financial record (§ 442.410(c) of the proposal), eight commenters recommended that the word "and" in the phrase "to the client and his or her parents or guardian" be changed to "or", noting that a parent or guardian should not have automatic access to the financial record of an adult client who can manage his or her own finances. Several additional commenters suggested that instead of changing "and" to "or", the words "as appropriate" be added to the end of the sentence. It was noted that even a client who has been adjudicated as incompetent should have the opportunity to examine his or her own financial record. Requiring the record to be made available to the client "or" the parent or guardian might be interpreted as precluding this opportunity.

Response: We agree with the commenters who point out that parents should not have automatic access to the financial records of adult clients who can manage their own finances. Therefore, we are revising the last part of the sentence to read " * * * client, parents (if the client is a minor), or legal guardian". This wording adequately addresses the general issue of access to the client's financial records.

Comment: Some commenters suggested requiring the facility to furnish the client and family with an annual financial statement.

Response: We do not believe it is necessary to require a facility to furnish an annual financial statement to the client or the client's family, since the facility is already required to make the financial record available at any time upon request. Requiring an annual statement could create the erroneous impression that the facility need only make the record available once a year and may impose, as well, a reporting burden not desired by family members or guardians.

Comment: Other commenters recommended requiring the financial record to be available, at the client's request, to a designated advocate and requiring that financial records be made available to those with a legal right to the information (which would not necessarily include the parent or guardian) and to the client "unless contraindicated".

Response: We do not believe that it is necessary to make explicit reference to third parties designated by clients to represent them, such as advocates. The facility already is required to make the record available to the client who, in turn, can elect to make it available to any other individual of the client's choice. This election also can be made by the client's parents (if the client is a minor) or legal guardian on the client's behalf.

E. Governing Body (Proposed § 442.412; Final § 483.410(a))

Comment: Most of the comments on this section concerned the provision in the proposed paragraph § 442.412(b) that would require "knowledge in the field of developmental disabilities" as one of the qualifications of the facility administrator. Many commenters requested clarification on how possession of this knowledge can be established (degree, years of experience, etc.). Some questioned the need for this requirement and expressed the belief that organizational skills, as well as managerial/administrative experience and training, are the most important qualifications for the administrator.

Response: After reviewing the comments regarding this requirement, we have decided to delete it. It would be difficult to formulate definitive, all-inclusive criteria for demonstrating this type of knowledge and experience. We believe that the presence of sufficient knowledge, experience and managerial skills in the field of developmental disabilities will be reflected in the quality of care furnished to clients in the facility. Therefore, the most appropriate indicators in assessing this factor will be outcome-oriented; that is, the quality of care that the clients actually receive.

Comment: One commenter requested that we revise the regulations to clarify that it is permissible for more than one facility to share a common administrator or governing body.

Response: Neither the proposed nor these final regulations preclude such an arrangement as long as the administrator adequately fulfills the functions and responsibilities required to manage each facility (or, in the case of a governing body, as long as the governing body meets the specific requirements set out in the standard for governing bodies at § 483.410(a) for each of the facilities involved).

Comment: One commenter requested that we keep the requirement in current regulations at § 442.408 for a management audit plan.

Response: We did not include the requirement for a management audit plan in the proposal or in this final rule. The reason is that we believe that the existence of a plan is not an appropriate measure of whether its function has been fulfilled and that each facility should determine for itself, either in advance or continously, the manner in which it monitors its own performance.

F. Communications With Clients, Parents, and Guardians (Proposed § 442.412; Final § 483.420(c))

Comment: Several commenters suggested that we maintain the provision in current regulations at § 442.414(a)(1) that requires a facility to notify parents or guardians of any significant in the client's condition.

Response: This requirement was addressed in the proposed § 442.434 that would require the facility to notify the client's parents or guardian promptly of any significant incidents. In the final regulations, this provision is located at § 483.420(c)(6). It requires facilities to notify promptly the client's parents or guardian of any significant incidents or changes in the client's condition. For a further discussion of the provision, see section III.P. of this preamble.

Comment: The proposed § 442.414 included an introductory statement that would require the facility to have an active program of communication with the client, parents, and guardian. Some commenters suggested that the word "and" be change to "or", to allow for direct communication between the facility and a competent adult client rather than through the client's parents.

Response: The proposed introductory statement was not intended to establish an explicit requirement, but rather to set the general tone of the requirements that follow it. Since it causes confusion as to its intent, we have revised it to say simply, "The facility must—". As in the proposed rule, the introductory statement of this final rule is followed by specific requirements.

Comment: Other commenters suggested that we replace the word "permit" as used in this section with "promote," to indicate a more active facility role in enabling clients to exercise their basic rights.

Response: We agreed with the commenters and, in this standard, have replaced the word "permit" with "promote" to emphasize the facility's active role in the communications process. We plan to issue interpretive guidelines that will clarify that this revised wording places a higher degree of responsibility on the facility in this area.

Comment: The proposed § 442.414(a) would require the facility to permit participation of parents and guardians

in the active treatment process specified in the proposed § 442.440, unless that participation is unobtainable or inappropriate. Many commenters requested clarification of the term "inappropriate" and of the process by which parental or guardian participation in the client's active treatment plan would be determined to be inappropriate or unobtainable. Additional commenters asked whether the term "active treatment" in this context is synonymous with "individual program plan".

Response: In this final rule, we have deleted the cross-reference to § 442.440 concerning active treatment, and have revised the language to refer to "the process of providing active treatment to a client". This is to clarify that the facility must promote parent/guardian participation in the entire range of activities connected with the provision of active treatment, from client assessment through delivery. Regarding the terms "inappropriate" and "unobtainable", we plan to issue interpretive guidelines to clarify that, for example, it would be inappropriate for an individual to attend interdisciplinary team meetings if his or her behavior is so disruptive or uncooperative as to preclude effective participation by anyone else. Similarly, the term "unobtainable," as used in this standard, means that the facility had made a bona fide effort to *seek* parental participation in the client's active treatment process, even though the effort may ultimately be unsuccessful (for example, the parent may be impossible to locate, or may prove unwilling or unable to participate).

Comment: Several commenters expressed concern that unannounced visits to the client (proposed at § 442.414(c)) or to areas of the facility that provide direct client care services (proposed at § 442.414(d)) should not be allowed to interfere with or disturb the privacy and rights of that or any other client.

Response: We share this concern, and have amended the language to provide for visits "consistent with the right of that client's and other client's privacy".

Comment: Over half the commenters addressing the proposed § 442.414(e) noted that, although the proposed regulations would require facilities to permit frequent and informal leaves of absence, State Medicaid programs often make no or very limited payment to reserve the client's bed in the facility during the leave of absence.

Response: Under the Medicaid program, payment during a leave of absence is a matter for each State to decide. The Medicaid regulations governing payment during leaves of absence (at § 447.40) provide that each State is free to determine whether and to what extent it will make payment in these situations. Of course, Federal matching funds are available whenever a State decides to make such payments under the regulations.

Comment: Other commenters suggested that a leave of absence should not be permitted in situations in which the interdisciplinary team determines that it would be inconsistent with the client's program goals (such as when a home visit would be potentially harmful).

Response: The proposed regulations would and these final regulations do require the facility to permit clients to go on visits and trips. A facility is not required to sponsor such trips or to allow the client to take a particular type of trip that is contraindicated. If a specific type of trip is contraindicated by a particular circumstance (for example, child abuse by a parent), then the facility is not required to permit such trips. However, as with any right that may need to be modified or limited, the client should be provided with the least restrictive and most appropriate alternative available. We note that in the final rule under the standard concerning the protection of clients' rights at § 483.420(a)(3), we have clarified the proposed requirements on a client's exercise of rights, by including the example of a client's right to due process.

Comment: Some commenters suggested deletion of the word "frequent" with reference to leaves of absence, to make clear that the regulations do not apply to facilities that provide only part-time, non-residential care.

Response: We are retaining the word "frequent", since these regulations apply only to inpatient facilities and, therefore, clearly do not include those facilities which provide only part-time care.

G. Compliance With Federal, State, and Local Laws (Proposed § 442.416; Final § 483.410(b))

Comment: A number of commenters expressed approval of the inclusion of civil rights requirements in this provision. However, there were also questions as to whether the applicability of civil rights requirements included accessibility for the handicapped under section 504 of the Rehabilitation Act of 1973.

Response: The provisions of section 504 of the Rehabilitation Act of 1973, including accessibility for the physically handicapped, apply to all programs receiving Federal funds. The Office for Civil Rights of the Department of Health and Human Services administers the regulations implementing section 504 relative to building accessibility for the physically handicapped and is routinely involved in the certification process for ICFs/MR. Because the proposed regulations text at § 442.416 gave the appearance that HCFA would be enforcing civil rights and research requirements, we have deleted these requirements from the text. However, we have added a new § 483.405 which describes the relationships between these regulations and those administered by other HHS agencies (for example, nondiscrimination on the basis of age administered by the Office of Civil Rights). Violations of these regulations, while not a condition of participation, may result in the termination or suspension of, or refusal to grant or continue, Federal financial assistance.

Comment: One commenter believes that there is an inconsistency between the proposed standard at § 442.416, which would require that the facility comply with all applicable Federal, State and local laws, and the proposed revision in the regulations at § 442.252 that would exempt ICFs/MR from meeting State nursing home regulations.

Response: The current § 442.252 requires all ICFs to meet State imposed safety and sanitation standards for nursing homes. These State-imposed nursing home requirements are not always appropriate to ICFs that serve the mentally retarded. Thus, we proposed to limit the applicability of § 442.252 to ICFs other than ICFs/MR. We see no inconsistency between the proposed amendments to § 442.252 and the proposed § 442.416 that would require facility compliance with Federal, State and local laws that are "applicable" to ICFs/MR. In order to further clarify that these regulations do not require State-imposed safety and sanitation standards for nursing homes to be applied to ICFs/MR, we considered moving § 442.252 from Part 442, Subpart E that applies to all facilities, to Subpart F that applies only to ICFs other than ICFs/MR. However, the current rules under Subpart F already address safety and sanitation laws at § 442.315(c). Therefore, in this final rule, we are deleting § 442.252. Thus, these regulations do not require States to apply State nursing home requirements with regard to safety and sanitation standards to ICFs/MR. However, a State continues to be free to apply State ICF/MR standards and, if it does, the facility is required by § 483.410(b) of these regulations to

comply with those State requirements. These regulations impose Federal safety and sanitation requirements on ICFs/MR at § 483.470 and elsewhere.

Comment: One commenter asked how to determine which provision would be controlling in situations where two or more applicable requirements conflict.

Response: We believe the commenters may be referring to a perceived conflict between the proposed § 442.416, which requires compliance with Federal, State and local laws, and the proposed § 442.460, which describes personnel qualifications. It is possible that a State may require one level of qualification for personnel (for example, doctoral) and the Federal regulations require a lower level (for example, bachelors). In fact, this does not represent a conflict because the regulations represent the basic minimum participation requirements. If a State permits licensure with lower requirements, these Federal regulations control for purposes of Medicaid certification. If, on the other hand, a State imposes higher requirements, the facility must in effect meet the higher of the two requirements.

H. Provision of Needed Services (Proposed § 442.418; Final § 483.410(d))

Comment: Approximately 45 commenters expressed views about the provision in this section that would require the facility to provide the following services directly through its own staff: the services of a qualified mental retardation professional; direct care services; nursing services; development and monitoring of active treatment programs; and living quarters. The majority of the commenters objected to the provision because it would require the facility to employ staff directly and prohibited them from "arranging for" staff on an as needed basis. The most frequent objection dealt with the employment of nursing staff for clients with medical care plans. Many commenters believe it is unreasonable to require a facility to employ directly a nurse for clients with medical care plans when a client may have such a plan infrequently and then, only for a short period of time. They felt that employment of nurses on a temporary basis, perhaps through a home health agency, would be a better alternative.

Other objections came from a State which by law requires case management and assessment to be conducted by county government and not the facility. The proposed requirement for providing active treatment monitoring services "directly" would seriously conflict with this local law. Another State provides the qualified mental retardation professional function, nursing services and the development and monitoring of active treatment programs through a centralized client services management agency. This arrangement has allowed for the development and support of small community-based facilities that could not exist without it.

Another commenter objected to requiring direct provision of living quarters because it precluded the facility from leasing space to provide services in small community-based facilities.

Response: The basic objective in specifying which services had to be provided directly by the facility was to assure that a facility would not create an ICF/MR "on paper" and contract out all the essential services, thereby escaping any real responsibility for their quality. The commenters on this requirement have pointed out the considerable difficulty this would cause for existing arrangements and for initiatives to establish more community based facilities. The commenters also pointed out how this requirement conflicts with our stated objective of providing more flexibility with greater emphasis on the outcome. As a consequence, we have deleted the requirement for direct provision of these services while retaining the requirements a facility must meet when it arranges to obtain a service from an outside resource. These requirements are: (1) For a written agreement specifying the conditions under which the services are provided and that the facility is responsible for assuring that the outside services meet Federal standards for quality; and (2) that the facility, itself, assure that the services meet client needs. If a facility fails to meet any of these requirements (for example, if the facility fails to assure the quality of the services provided under an arrangement), it is subject to the same sanctions as if it had provided the services directly.

I. Personnel Policies (Proposed § 442.420; Final § 483.420(d))

Comment: A significant number of commenters raised objections about the proposal to require facilities to develop and implement personnel policies. Some insisted that to be meaningful these policies should be in writing. Others wanted personnel policies to be reviewed annually. Another commenter wanted to distinguish the term "job description" from "job classification".

Response: Because of the significant interpretive problems raised by commenters, because we do not view the availability of job descriptions and written personnel policies as a significant client care issue, and because written job description and personnel policies are regulated by State law, especially for the small provider, we have withdrawn the proposed requirements at § 442.420(a) for personnel policies and § 442.420(b) for job descriptions. We note that the remaining provisions of this proposed section have been moved. The proposed § 442.420(c) dealing with communicable disease has been modified as indicated in the following comment and response, and incorporated into the provisions relating to infection control (§ 483.470(1)(4) of this final rule). The proposed § 442.420(d) that would prohibit employment of individuals with a history of child abuse has been incorporated into the provisions relating to staff treatment of clients at § 483.420(d) of this final rule.

Comment: Many commenters were concerned about the proposed regulations that would prohibit employees with signs and symptoms of communicable disease from working. They were concerned about the definition of the phrase "communicable disease" and suggested the requirement be changed to apply only to those employees who have contact with clients.

Response: We agree and have changed the regulations to prohibit employees with symptoms or signs of a communicable disease from "direct contact" with clients and their food (§ 483.470(1)(4) of this final rule).

Comment: Many commenters expressed concern about the problem of employing those with a history of child abuse, neglect or exploitation, indicating that a "history" of abuse was vague and nonspecific. Several of these commenters suggested that the proposed requirement be modified to prohibit employment by those convicted of child abuse, neglect or exploitation.

Response: We agree in part and have modified the requirement to prohibit employment of individuals who have been "convicted" of one of the mentioned abuses. However, we have retained the proposed prohibition against the employment of individuals with a "history" of such abuses but have defined "history" as "prior employment history". We do not believe that it would be an unreasonable task for the facility to obtain references from previous employers to determine if a prior history of child abuse, neglect or exploitation exists.

J. Licensure and Professional Standards (Proposed § 442.422; Deleted in Final)

Comment: Seven commenters objected to the provision that would

require the facility to meet the same professional licensure requirements that the State has established for comparable positions in the community. Commenters stated that this requirement would have the effect of superseding State laws that specifically allow less qualified individuals to practice in State institutions (that is, ICFs/MR) than in community facilities. Three of the commenters asked us to amend the regulations so that it would not supersede State law in those States that allow a lower standard in State institutions. One commenter specifically asked that we add the words "unless specifically provided for under State law and regulation".

Two commenters suggested that we clarify the regulations because the proposed § 442.460(e)(5) would allow a masters level psychologist, but the proposed § 442.422 would require a doctoral level if the facility was in a State that required the doctoral level degree for community practice.

Response: We agree with the commenters who would like to amend this section so that these regulations would not supersede State laws that specifically allow lower personnel requirements in public institutions (that is, ICFs/MR). These laws are usually based on the theory that the setting of larger State institutions imposes a level of supervision that is not present in independent practice. To amend this section as commenters wish would be to require the facility to meet the personnel credentialling requirements of State law. We have deleted the proposed § 442.422 from the final rule because the proposed § 442.416 (§ 483.410(b) of this final rule) that would require the facility to meet applicable State laws meets their concerns on this issue.

The deletion of § 442.422 answers the concerns that the proposed personnel requirements for psychologists at § 442.422 were inconsistent with the proposed requirements under the standard for professional program services (§ 442.460(e)(5) of the proposed, § 483.430(b)(5) of the final).

K. Staff Treatment of Clients (Proposed § 442.424; Final § 483.420(d))

Comment: Many commenters suggested that to be useful the policies and procedures that prohibit mistreatment, neglect and abuse should be in writing.

Response: We agree that policies and procedures on prohibition of mistreatment, neglect and abuse should be in writing and have amended the regulations accordingly. Since these policies and procedures are directly related to the protection of clients' rights, health and safety, we want everyone in a facility to know exactly what policies and procedures exist in this regard.

Comment: Many commenters objected to the five day time frame for investigations of alleged incidents of mistreatment, neglect or abuse. Some commenters indicated that five days is too short a period to conduct an investigation while others said that five days is an excessive amount.

Response: The current regulations at § 442.430(c)(2) allow 24 hours for this reporting. In the proposed rule, we increased this reporting time to five working days because we wanted to allow sufficient time for a reasonably thorough investigation. While incidents of this nature will vary widely in their degree of severity, and thus require a wide variation in time necessary to investigate them, we believe that five working days is a good balance for most cases. Further, we do not preclude the facility from conducting such investigations in a shorter period of time.

Comment: One commenter stated that the regulations should state the specific kinds of reporting mechanisms that are acceptable to meet the proposed requirements for reporting mistreatment, abuse or neglect of clients.

Response: We believe that the proposed regulations adequately address the broad objective the facility much achieve. We do not believe it necessary to specify detailed reporting mechanisms. We also believe that a facility should be free to develop its own specific procedures as long as documentation exists that shows that alleged violations are investigated and appropriate action taken.

Comment: One commenter suggested that this section be expanded to prohibit client exploitation as well as mistreatment, neglect and abuse.

Response: We do not agree with this suggestion because we believe that "mistreatment" would include the exploitation of a client. We will explain in interpretive guidelines that mistreatment includes exploitation.

Comment: One commenter suggested clarification of the term "appropriate corrective action" as it pertains to the actions of the administrator once an alleged violation has been verified.

Response: We can not attempt to describe all the potential abuses and the degrees to which they may occur. Thus we cannot attempt to define "appropriate corrective action". The facts of the situation will have to be evaluated by the surveyor and a judgment made about appropriateness.

Comment: Several commenters suggested that this section could be strengthened by clearly stating that the facility's immediate responsibility in the event of an allegation of abuse or neglect is to ensure no further harm to the client.

Response: We agree and have modified the regulations to require the facility to take steps to prevent any further potential abuse while alleged abuses are being investigated.

Comment: Several commenters suggested that the facility should be required to investigate abuse or injuries caused by another client, self-abuse, or incidents by an unknown source.

Response: We have accepted this comment and, at § 483.420(d)(1) of this final rule, have changed the proposed provisions to require the facility to prohibit neglect or abuse by any individual. We also have modified the proposed provisions to include a requirement that the facility investigate injuries of unknown sources regardless of the source.

Comment: One commenter suggested that the report of an investigation into alleged violations of mistreatment, abuse and neglect should be a preliminary report.

Response: We do not agree with this suggestion. We have already extended the period in which a report may be prepared from 24 hours to five working days. To allow the report to be preliminary would unnecessarily weaken the requirement.

Comment: Several commenters suggested that the proposed regulations be modified so that "alleged violations of policies are reported" is changed to "alleged violations of abuse and neglect are reported". Other commenters asked that we simply delete the words "of policies" so that the focus would be on the violation, not on policy.

Response: We agree with the commenters that the focus of the requirement is the reporting of mistreatment, abuse and neglect. Therefore, we have changed the regulations accordingly.

Comment: One commenter requested that we define "working days" as it is used in the proposal requiring a facility to report investigations of alleged violations of mistreatment, abuse and neglect within five working days.

Response: We will define this term in intepretive guidelines by stating that it refers to Monday through Friday excluding State and Federal holidays.

Comment: One commenter indicated that there should be a way to bypass the administrator if he or she is the abuser.

Response: We agree with this commenter and have modified the regulations so that the results of an investigation may be reported to the administrator or to "other officials". (The interpretive guidelines will expalin that when a report of known or suspected abuse or neglect involves the acts or omissions of the administrator, a different properly constituted authority outside of the facility must receive and investigate the report and take appropriate protective and corrective action.)

Comment: One commenter noted that it would be appropriate to incorporate into this standard the prohibition of verbal, physical and sexual abuse proposed under the standard "Behavior Management—policies and procedures" at § 442.452(c).

Response: We have deleted the reference to verbal, physical or sexual abuse from the standard concerning behavior management and will explain in interpretive guidelines that the prohibition of these forms of abuse are encompassed under the standard concerning staff treatment of clients.

Comment: One commenter stated that this section also should mandate that facilities have an appropriate procedure to deal with situations when clients are missing.

Response: We agree with this commenter. However, provision already was made for addressing the issue of missing clients under the proposed § 442.550 that concerns emergency plans and procedures and that would require the facility to develop and implement written plans and procedures to deal with missing clients. This provision has been incorporated into the final rule at § 483.470(h).

Comment: One commenter expressed concern that measures be taken to protect the rights of employees as well as clients.

Response: While it is true that employee rights are a significant issue in allegations of client abuse, these regulations are designed to protect and treat clients of the facility. We expect State and local law, employment contracts, and union contracts to address issues of employee protections.

L. Facility Staffing (Proposed § 442.426; Final § 483.430(c))

Comment: One commenter expressed an opinion on the proposed requirement at § 442.426(a) that the facility must not depend upon clients or volunteers to perform direct care services for the facility. In their view, the phrase "must not depend" is unclear. They asked whether this means that clients or volunteers cannot perform client care services and whether this would eliminate forster grandparents.

Response: The intent of the regulations is that the facility may not entirely rely upon volunteers for routine staffing. The interpretive guidelines for these regulations will explain that volunteers may provide supplementary services but that the facility may not rely exclusively upon them to perform direct care services. Facilities cannot depend on volunteers to fill required staff positions.

Comment: There are fifteen comments on § 442.426 (b) and (e) of the proposed regulations. The intent of both these sections is that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties. Most of the commenters felt that the wording in the proposed paragraph (b) (which states that direct care staff must not be required to provide housekeeping, laundry or other support services to the extent that these duties interfere with the exercise of their primary direct client care duties) precluded any flexibility in management. In their view, there are, at times, legitimate reasons for direct care staff to perform such duties. For example, at times, staff in group homes do housework while training residents. The commenters preferred the wording in the proposed paragraph (e) that states, "The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

Response: We have accepted the comments, recognizing that the proposed paragraphs (b) and (e) of § 442.426 are duplicative. Since the commenters preferred the wording of paragraph (e), we have deleted the proposed paragraph (b) and retained the language of the proposed paragraph (e).

Comment: There were seventeen commenters on the proposed requirement at § 442.426(c) that in each residential living unit housing clients for whom a physician has ordered a medical care plan, or clients who are aggressive, assaultive or security risks, or one that houses more than 16 persons, there must be responsible direct care staff on duty and awake when clients are present to take prompt, appropriate action in case of injury, illness, fire or other emergency. Many of the commenters felt that the term medical care plan was unclear and needed to be defined. Several commenters also questioned whether or not the proposed requirement meant that there must be responsible direct care staff on duty and awake when clients are present in group homes with live-in houseparents.

Response: We have accepted the comments requesting clarification of the term "medical care plan". This also was a significant issue in the comments on the proposed § 442.464, Physician Participation (see Section III.AA. of this preamble). Thus, we have clarified under § 483.460(a) concerning physician services that a physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client whose health needs are so severe as to require 24-hour licensed nursing supervision. With regard to group homes with live-in houseparents, the proposed regulations would require and the final regulations require responsible direct care staff on duty and awake when clients are present in each of the situations stated in the proposed regulation; that is, when the residential building houses more than 16 clients or when the residential living unit houses clients for whom a physician has ordered a medical care plan, or clients who are aggressive, assaultive or security risks. In these situations, clients are high risk individuals in terms of their vulnerability to emergency situations such as fires, injuries or health emergencies (for example, aspiration, cardiac or respiratory failure, seizures). Such vulnerability also increases as the number of clients in a facility increase. Thus, in these situations, a responsible direct care staff person on duty and awake has been retained as a requirement.

Comment: There were five comments on the proposed requirement at § 442.426(d) that in each defined residential living unit housing clients for whom a physician has not ordered a medical care plan and that houses 16 or fewer clients, there must be a responsible direct care staff person immediately accessible to clients on a 24-hour basis. The majority of the commenters felt that the term "immediately accessible" should be defined. One commenter felt that the regulation should read, "there must be a responsible direct care staff person on the premises and immediately accessible".

Response: We have revised the regulations to read that staff must be "on duty" rather than immediately accessible. Interpretive guidelines will explain that the intent of the regulation is that at all times a staff person is in a position to help if client need arises. We will explain that on-duty staff, for purposes of this provision, need not be

awake. We also will explain that the provision (located in the final rule at § 483.430(c)(2)) has been modified to assure that 16 or fewer clients located in units of multi-unit buildings must have staff on duty and "awake". This provision is necessary because multi-unit buildings are usually of such size and configuration that the opportunity for staff to detect and react to client problems is excessively limited.

Comment: Commenters felt that the term "support staff" was unclear in the proposal at § 442.426(e) that would require the facility to provide sufficient support staff so that direct care staff are not required to perform support services to the extent that those duties interfere with the exercise of their primary direct client care duties.

Response: We have accepted these comments and will include the following definitions in the interpretive guidelines for the regulation: Support staff include all personnel hired by the facility that are not either direct care staff or professional staff. For example, support staff include, but are not limited to, housekeepers, maintenance and laundry personnel. Direct care staff are those personnel managing and supervising the daily needs of clients in their living quarters.

Comment: Thirty-one comments were received on the proposed requirement at § 442.426(f) that the facility must employ a qualified dietitian, who is registered or eligible for registration by the American Dietetic Association, either on a full-time, part-time or on a consultant basis. The majority of the comments suggested that the regulation should be more specific with regard to the number of hours a qualified dietitian should be employed by the facility. Most of the commenters felt that the number of hours should depend on facility size. There was no consensus among the commenters, however, as to how specific guidelines could relate facility size to the number of hours needed from a qualified dietitian. Several commenters felt that the regulations should allow more flexibility by stating that the facility should employ a qualified dietitian for sufficient time to meet the needs of residents. Some of the commenters also believed that the requirements regarding dietitian personnel in the proposed § 442.426 (f) and (g) should be moved to the proposed standard at § 442.558, concerning food and nutrition services.

Response: We have accepted the comments suggesting that the regulations be flexible enough to allow facilities to employ a qualified dietitian for sufficient time to meet the needs of residents. We also have accepted the comments suggesting that facility requirements for employing a dietitian should be moved from the standard concerning facility staffing to the standard concerning food and nutrition services. Additionally, to ensure that all professional qualifications are consolidated, we have moved the qualifications for a professional dietitian to the professional program services standard. Thus, in this final rule, the standard for food and nutrition services at § 483.480(a)(2) will state that "A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion."

Comment: Twenty-one comments were received concerning the proposed requirement that if a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services. Many of the commenters felt that qualifications for a non-dietitian food service director need to be added. Additionally, several commenters believed that the regulations should be expanded to specify the duties of the food service supervisor.

Response: We have not accepted the comments requesting that the qualifications and duties of the designated director of food services who is not a qualified dietitian be added to the regulations. The outcomes of good food and nutrition services were outlined under the proposed standards at § 442.460 Meal Services, § 442.562 Menus, and § 442.564 Dining Areas and Service, and have been adopted into this final rule under the condition of participation concerning dietetic services at § 483.480. An example of an outcome is nutritional foods served in appropriate quantities and at appropriate temperatures. The intent of the regulations is that the specified outcomes be met. If the outcomes are achieved, the qualifications and duties of the person performing the services do not need to be specified in regulations.

M. Direct Care Staff (Proposed § 442.428; Final § 483.430(d))

Comment: Approximately 60 commenters expressed views on the proposal to prescribe various staff to client ratios depending on the needs of the clients (for example, one staff member to 3.2 clients with severe disabilities; one staff member to four clients with moderate disabilities; and one staff member to six clients with mild disabilities).

In essence, the commenters had two clear reactions to the proposal: (1) They uniformly thought that the ratios were inadequate to provide active treatment and barely adequate to provide custodial care, and many commenters thought that we needed a requirement for "sufficient" direct care staff to supplement the ratios as they were proposed; and (2) the commenters thought the ratios needed clarification. Commenters asked for clarification of the following: what staff are included in calculating the ratios; was it permissible to have part-time staff serve when the number of clients dictated less than a full-time staff; and, are staff necessary when there are no clients in the living unit such as when all clients are at workshops or school. Finally, commenters expressed a preference for ratios based on shifts, as described in the preamble to the proposed rule, rather than on a 24-hour basis as proposed in the regulations text.

Response: We have retained the ratios as proposed, which would require staffing levels comparable to those in existing regulations at § 442.445(c), but in accordance with public comments, we have made the following changes in order to strengthen and clarify the regulations.

1. We have decided to retain the proposed ratios, which are based on a 24-hour time frame, in order to provide the facility as much flexibility in staffing as possible.

2. We have added a requirement that the facility provide "sufficient direct care staff to manage and supervise clients in accordance with the individual program plans". This standard clearly establishes "sufficient staff" as the optimal requirement and subsumes the ratios as the minimal standard. We believe the addition of the "sufficient direct care staff" provision is an effective means of addressing the commenters' opinions that the stated ratios are inadequate, since the new provision is tied to implementation of client objectives and therefore assessable in an outcome oriented survey process.

3. We will define in interpretive guidelines that direct care staff are those staff who manage, supervise and provide direct care to clients in their residential living units. This staff could include professional staff (for example, registered nurses, social workers) or other support staff if their primary assigned, daily shift function is to provide management, supervision and direct care of clients' daily needs (for example, bathing, dressing, feeding, toileting, recreation, and support and reinforcement of active treatment objectives) in their living units. However, professional staff who simply work with clients in a living unit on a periodic basis cannot be included. Also, supervisors of client care staff can be

counted only if they share in the actual work of the direct care of clients. Supervisors whose principal assigned function is to supervise other staff cannot be included.

4. We have added a provision that stipulates that when no client is present in the living unit, no staff need to be present. This will satisfy commenters who objected to staffing a facility when all the clients were away at workshops or school. However, we have included a requirement for a responsible staff person to be available by telephone in case one of the clients needs to return to the living unit (§ 483.430(d)(4)).

5. We will make it clear in interpretive guidelines that when only one client is in a living unit, there must be at least one staff person on-duty. As did the proposed regulations, the final regulations require a minimum of one staff person to be on duty when clients are present in a facility housing 16 or fewer clients (§ 483.430(c)(3)), and a minimum of one staff person to be on-duty and awake when clients are present in a facility housing more than 16 clients (§ 483.430(c)(2)).

N. Staff Training Program (Proposed § 442.430; Final § 483.430(e))

Comment: Many commenters expressed support for the proposed changes regarding staff training since we emphasized performance rather than meeting paper requirements. However, other commenters indicated that the proposed standard was too general and that a greater degree of specificity was needed indicating the kinds of training required, the number of hours required for training, documentation of inservice curricula, etc.

Response: We believe that the proposed standard would allow a degree of flexibility to a staff training program that would be lost by establishing specific criteria. The training needs of facilities vary from facility to facility, with such factors of facility size and staff experience being important elements in determining training needs. We believe that specific criteria would be counterproductive to the intent of the standard.

Comment: Several commenters expressed concern about the requirement in the proposed § 442.430(c) that states that staff must be able to demonstrate the skills and techniques needed in client care. Concern was focused on the means of establishing that the requisite skills have been learned. It was suggested that interpretive guidelines be issued that would define more clearly the expectations of achieving this requirement.

Response: We believe the standard is clearly stated. Essentially, staff must know how to do what the facility has committed itself to do in behalf of each client's active treatment objective. This is the essence of an outcome oriented requirement. If staff do not know how to do their jobs, clients cannot achieve stated objectives in their plans. We will assess in surveys whether staff can show us how to implement active treatment programs and to treat clients.

Although not in response to a particular comment, we have made one clarifying change to the standard. We have changed the provision of the proposed § 442.430(c) from, "Staff must be able to demonstrate skills and techniques necessary to implement the individual program plans for each client under their care," to "each client for whom they are responsible".

O. Client Records (Proposed § 442.432; Final § 483.410(c))

Comment: There were several comments on the proposed regulation at § 442.432(a) that would require the facility to develop and maintain a recordkeeping system. Most of the commenters suggested that the current regulations found at § 442.501(b) requiring specific client data and § 442.501(c) requiring a discharge summary be added.

Response: Necessary elements of the current regulations at § 442.501 (b) and (c) were included in the proposed regulations. The requirement for specific client data was included at the proposed § 442.448(a) (§ 483.440(e)(1) of this final rule); the requirement for a discharge summary was included at the proposed § 442.442(c)(4) (§ 483.440(b)(5)(ii) of this final rule); relevant health-related information was included at the proposed § 442.448(b) (§ 483.420(c)(1) of the final rule); relevant restraint information was included at the proposed § 442.456 (c), (e) and (h) (§ 483.420(c)(2) and § 483.450 (c)(4) and (d)(2), (4) and (6) of the final rule); relevant behavioral and family-related information was included at the proposed § 442.448(a) (§ 483.440(e) (1) and (2) of the final rule); and relevant social and legal information was included at the proposed § 442.432 (a) and (c) (§ 483.420(c) (1) and (3) of the final rule).

Comment: There were 11 commenters on the proposed regulations at § 442.432 (b) and (c) that deal with the confidentiality and release of information in clients' records. All of the commenters believed that the regulations should specify that confidentiality and release of information does not apply to government agencies and advocacy groups.

Response: We agree with the thrust of the commenters suggestions that government agencies and advocacy groups be allowed to review client records when appropriately trying to evaluate the information that such records contain. However, we have not revised the regulations. To state in the regulations that advocacy groups have access to information without receiving the necessary consent from a client or his or her parents or legal guardian violates the rights of the client.

Comment: There were three comments on the proposed requirement at § 442.432(d) that any individual who makes an entry in a client's record must make it legibly, date it, and sign it. All of the commenters believed that the requirement that each record be signed is obsolete in the days of automated data systems.

Response: We have not accepted these comments. Even though computerization is routine in many areas of client records, the purpose of any routinization of information that is involved is to save the time of professionals. The signature on the client's record however, indicates that the information in the record has been individualized and the professionals take responsibility for the information it contains. However, interpretive guidelines will permit the use of electronic signatures in cases in which the facility has created the option for medical records to be maintained by computer rather than in hard copy.

Comment: There were five comments on the proposed requirement at § 442.432(f) that the facility must provide each identified residential living unit with appropriate aspects of each client's record. All of the commenters believed that the regulation was too vague and that the terms "appropriate aspects" should be clarified.

Response: We will define the term "appropriate aspects" in interpretive guidelines as meaning the active treatment, social as well as health aspects of the plan.

P. Emergencies or Death of a Client (Proposed § 442.434; Final § 483.420(c)(6))

Comment: There were eleven comments on the proposal to require facilities to notify promptly the client's parent or guardian of any significant incidents including serious illness, accident or death, and autopsy findings if requested. Many of the commenters felt that examples of significant incidents, in addition to serious illness,

accident or death, should be included. Some of their suggestions were unauthorized absence from the facility and allegations of abuse. An additional group of commenters thought that autopsy findings should not be included because many facilities do not do autopsies or receive autopsy reports.

Response: In this final rule, we have included abuse and unauthorized absences as examples of significant incidents. Also, we will issue interpretive guidelines that will state other examples, including those the commenters suggested.

We note that we have moved this standard into the standard concerning communications with clients, parents, and guardians. Thus, in the final regulations, it is located at § 483.420(c)(6). Additionally, we have accepted the comments requesting that autopsy findings be removed from the regulations.

Q. Infection Control (Proposed § 442.436; Final § 483.470(l))

Comment: Three commenters recommended that we define in the regulation the term "active program" as it was used in the proposed provision to require an active program for the prevention, control, and investigation of infection and communicable diseases.

Response: We have not accepted these comments to include this level of specificity in the regulations. However, interpretive guidelines will define an active program as one that includes the direct care staff routinely washing their hands after working with a client who has an infectious disease, the continuous use of aspectic technique when appropriate, an on-going program of communicable disease control and investigation of infections.

Comment: Five commenters expressed an opinion on the proposal to require facilities to maintain a log of incidents and corrective actions related to infections. Several of the commenters believed that the maintenance of a log could be burdensome and would be of no use to the facility. Additionally, some commenters felt that the term "record" should replace the term "log".

Response: We have changed the word "log" to "record". However, we have not removed the requirement to maintain such records. Without such records, public health officials have no evidence with which to conduct epidemiological investigations. Such investigations are necessary to establish the causation upon which corrective action must be based.

R. Active Treatment (Proposed §§ 435.1009 and 442.440; final §§ 435.1009 and 483.440(a))

Comment: Forty-three commenters submitted their opinions about the proposed definition of active treatment provided at §§ 442.440 and 435.1009. In general, commenters expressed clear support for the concept underlying the proposed defintion. Twenty-one commenters expressed specific support that active treatment explicitly include those services intended to prevent client regression. However, commenters stated that in their opinion, the language of the proposed definition was still unclear. Objections expressed by the majority of commenters focused on four issues: (1) The definition of active treatment included the term "active treatment", thus active treatment was defined as being an "active treatment program"; (2) the difference in meaning of the terms "behavioral", "developmental" and "social" skills, as used in the definition, was insignificant, and technically imprecise; (3) services intended to "decelerate" the rate of regression of clients who have degenerative conditions (for example Muscular dystrophy, or Alzheimer's disease) were not included as "active treatment"; and (4) the phrase, "For dependent clients where no further positive growth is demonstrable", as used in the proposed definition, was perceived to be stigmatizing, did not identify criteria useful in making such determinations, and authorized a facility unintentionally, to provide "custodial care" if client potential for growth was uncertain, or not easily measurable. Commenters submitted suggested revisions to the proposed language to be considered for inclusion.

Response: We found the comments pertaining to active treatment to be helpful, and agree that the proposed definition (at § 435.1009) and requirements (at § 442.440) could be strengthen with some of the modifications suggested. Therefore, we have made several revisions. First, in § 435.1009, of this final rule we stated that active treatment is treatment that meets the requirements specified in the standard concerning active treatment at § 483.440(a). Second, we have revised the regulations to include at § 483.440 a condition of participation entitled "Active treatment services". The standard at § 483.440(a) now specifies that active treatment is the aggressive, consistent implementation of a program of specialized and generic training, treatment, health and related services, as described in 42 CFR Part 483, Subpart D. Third, since the use of the terms "behavioral", "developmental", and "social" to modify the word "skills" was technically imprecise, we have revised the standard concerning active treatment to require that each client's program must be directed toward the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible. Fourth, although the proposal had been intended to include services to decelerate the regression of clients with degenerative conditions, we have revised the regulations (now at § 483.440(a)(1)(ii)) to include this statement as an explicit requirement. Lastly, we have deleted the qualifier phrase, "For dependent clients where no further positive growth is reasonably considered possible", since the language of the regulation, "active treatment includes services to prevent or decelerate regression or loss of current optimal status" embodies our original intent.

Comment: One commenter criticized the proposed definition of active treatment because it did not mandate that clients be placed in the "least restrictive alternative" available. This commenter stated that, for the definition of active treatment to be consistent with accepted standards in the field of mental retardation and developmental disabilities, it should include this requirement at §§ 435.1009(a)(1) and 442.440(a)(1).

Response: We appreciate the suggestion of the commenter, and agree that placing clients in the "least restrictive alternative" available is an important principle in the field of mental retardation and developmental disabilities. It is our belief, however, that requiring this as a part of the active treatment program, and thus making it a requirement for FFP, would go beyond the statutory intent of Congress in authorizing ICF/MR services. There is nothing in the statutory language at 1905(d) of the Act, which authorizes ICF/MR services, that suggests that the size or the location of a facility, or whether a facility is the least restrictive alternative, should determine whether or not a facility qualifies for FFP. The only statutory requirement is that a client receive active treatment at the facility. Therefore, we have not accepted this suggestion for change. However, we have revised these regulations to include the application of this concept to other provisions, especially with regard to imposition of restrictive or intrusive techniques to change client behavior as discussed in § 483.450(b)(1)(iii) of this final rule.

Comment: A few commenters criticized the proposed definition, because in their opinion it implies that only "some" clients can benefit from active treatment. These commenters stated that all individuals can benefit from active treatment, since it means training or education.

Response: We agree that the term "active treatment" is defined by many professionals in the field of mental retardation and developmental disabilities, to mean habilitation, education and training services. Also, active treatment is often considered to be synonymous with life-long learning. However, the purpose of the proposed definition of active treatment was not to include all the meanings that may be given to the term, but to provide a definition of active treatment that specifically encompasses those services that clients must require and receive, in order to be certified as needing ICF/MR care under the Medicaid benefit. We believe the definition of active treatment included in the final rule achieves that purpose. Nevertheless, we recognize that there are other definitions of active treatment. As we noted, we have set forth a definition of active treatment in the final rule at § 435.1009 that cross-refers the reader to the standard for active treatment at § 483.440(a).

Comment: A few commenters criticized the proposed definition of active treatment because in their opinion it did not identify the specific "outcomes" toward which active treatment is to be directed. Other commenters suggested that we amend the definition to require that clients must not only receive active treatment, but that they also must benefit from active treatment, as well.

Response: We agree that active treatment should be outcome oriented. But, we do not agree that we should include this additional requirement. We believe the state-of-the-art is such that we can hold providers accountable to implement, review and continually modify the strategies they use to impove client functional abilities. However, we recognize that there are legitimate reasons why a client may not gain a desired objective. Thus, active treatment is measured more in terms of how aggressively, competently and consistently the ICF/MR pursues objectives in behalf of clients.

Comment: Several commenters stated that the provision of habilitation services is the cornerstone of active treatment. Therefore, they recommended specifically that the proposed definition be amended to include the term "habilitation", as it is used in the context of the Home and Community-Based Services Waiver program (as provided in section 1915(c)(5) of the Act, that was added by section 9502(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272).

Response: We do not agree that the term habilitation, as defined for purposes of the home and community-based waiver program, should be included in the definition of active treatment at § 435.1009. Although Congress provided a definition of habilitation services in section 1915(c)(5) of the Act, that definition focuses on clients who otherwise would have been institutionalized rather than strictly those currently in an ICF/MR. By its own terms, it refers to "individuals who receive such services after discharge from a skilled nursing facility or intermediate care facility," and not to inpatients. While active treatment may include some services that are defined as being habilitative, we do not believe that it is feasible to attempt to identify in our definition of active treatment every type of service that must be provided to ICF/MR residents to assist them to reach maximum possible independence. Nevertheless, we believe our definition of active treatment is sufficient in scope to encompass the whole range of services necessary for clients to achieve maximum possible independence.

Comment: Conversely, other commenters objected to the proposed definition of active treatment, because in their opinion it meant that active treatment was limited only to habilitation services. Twenty-two commenters suggested that the definition of active treatment also should include vocational, educational, rehabilitational, medical, behavioral, social, and personal care services; and any other services necessary to meet the client's needs as identified by the comprehensive functional assessment. These commenters recommended that clients should be provided with any of these services that are needed to help them achieve a developmental goal related to their individual program plans (IPPs).

Response: Such services may be among those embraced by some within the term "active treatment". However, as stated before, we do not agree with the commenters that we should attempt to identify specifically in the regulations all the various services that can be considered to be active treatment. We do not believe that this would be feasible because there are many contingencies that may effect whether or not a specific service constitutes active treatment for a particular client. However, we believe the definition of and standard for active treatment in this final rule does encompass the whole range of services necessary for the client to achieve as much individual independence as possible.

Comment: Several commenters recommended that we identify within the definition of active treatment, those active treatment services that are reimbursable by Medicaid. These commenters stated that the regulations should provide a clear distinction between those services for which FFP is available, and those vocational and educational services that are not covered by Medicaid. Also, commenters believed that interested groups and citizens should be given the opportunity to offer comments and suggestions on how these distinctions would be made. Although HCFA has used guidelines for this purpose, the commenters asserted that regulations are preferable.

Response: We disagree. First, the source of payment for services a facility provides does not govern the requirements relating to the provision of services. Thus, all "active treatment" services, although necessary as a condition of participation, may not be reimbursable as medical assistance or rehabilitative services under Medicaid. A facility must meet the requirements of these regulations to participate in the Medicaid program regardless of the payment status of individual services. Also, the distinction between payors is often as much a function of Federal and State education and vocational training laws as it is related to the nature of the services themselves. Thus substantive distinctions between types of services are not within the purview of this regulation. Regulations addressing the exclusion of FFP for vocational training and educational activities in ICFs/MR already are contained at § 441.13(b).

With respect to the commenters' concern about HCFA guidelines used to interpret § 441.13(b), we note that the State Medicaid Manual (SMM) is the official medium by which HCFA interprets or clarifies issues and sets forth procedures that States are required to follow in implementing the regulations. Guidelines that are issued as part of the SMM are official interpretations of the law and regulations. Thus, these guidelines are not a substitute for the regulations, but a guide to States on compliance with the requirements in the regulations.

Comment: Several commenters stated that we should revise the requirements for active treatment to encompass directly all of the services described in §§ 442.442 through 442.460 of the

proposed regulations, since these sections more clearly describe the whole active treatment process than our proposed definition does.

Response: We agree in part with the commenter. In restructuring the regulations in the condition format, we have established a condition of participation concerning active treatment services (§ 483.440). Under that condition, we have included as standards (a) through (f) the standards that we had proposed as § § 442.440 through 442.450:

(a) Standard: Active treatment (proposed as § 442.440).
(b) Standard: Admissions, transfers and discharges (proposed as § 442.442).
(c) Standard: Individual program plan (proposed as § 442.444).
(d) Standard: Program implementation (proposed as § 442.446).
(e) Standard: Program documentation (proposed as § 442.448).
(f) Standard: Program monitoring and change (proposed as § 442.450 (b), (c), (d), and (e).

We have not included the proposed standards at §§ 442.452 through 442.460 under the condition of participation concerning active treatment. We believe that the proposed standards at §§ 442.452 through 442.458 are grouped more appropriately under the condition concerning client behavior and facility practices (§ 483.450 of this final rule), and the proposed standard at § 442.460 concerning professional program services is placed more appropriately under the condition for facility staffing (§ 483.430 of this final rule).

Comment: Some commenters requested that we clarify the meaning of the proposed rule at §§ 442.440(b) and 435.1009(b) that state that "Active treatment does not include maintenance of generally independent clients who are able to function with little supervision or who require few if any of the significant active treatment services described in 42 CFR Part 442." Commenters suggested that either we define what we mean by the phrases "generally independent clients", "significant active treatment services", "little supervision", and "few if any"; substitute other terms; or specify the amount and intensity of services necessary to qualify a client as being eligible for ICF/MR level of care.

Response: A determination that a particular client does not need active treatment, because he or she is sufficiently independent, is a decision that has to be made on an individual basis. Therefore, to allow room for professional judgment on the part of surveyors and providers, and because of the limitations of the current state-of-the-art, we believe it is necessary to describe the requirement in general terms. However, for purposes of clarity, we have revised the proposed rule, so that the regulations now describe these clients as being "able to function with little supervision or in the absence of a continuous active treatment program". We will issue interpretive guidelines that will describe the characteristics of clients who should be reviewed closely by surveyors for inappropriate placement in an ICF/MR setting. Generally, inappropriately placed clients are those clients who can become increasingly more independent without aggressive and consistent training. These clients are usually able to apply skills learned in training situations to other settings and environments. These clients would generally be able to take care of most of their personal care needs, to make known to others their basic needs and wants, and to understand simple commands. They generally would be capable of working at a productive wage level, and, to some extent, would be able to engage appropriately in social interactions. Also, usually they would be able to conduct themselves appropriately when allowed to have time away from the facilities' premises. Facilities serving these types of clients, who are by definition inappropriately placed, will be carefully evaluated for inappropriate certification as an ICF/MR.

Comment: Ten commenters objected to the active treatment program described in the proposed § 442.440(d), because it did not include the maintenance of generally independent clients. Commenters objected to this exclusion because they believe that without the programmatic structure provided in an ICF/MR, some of these clients would not be able to continue to function independently and would regress rapidly.

Response: We believe that some clients need the help of an ICF/MR to continue to function independently because they have learned to depend upon the programmatic structure it provides. We believe these clients should be trained to overcome this learned "dependency" through a carefully designed active treatment program aimed at its elimination. Active treatment for such a client should be directed toward the client acquiring skills that are self-initiated and increasingly more self-directed. It should not include the "maintenance programming" of skills already developed or providing the client with mere protective oversight. Therefore, we do not agree that the prohibition against "maintenance programming" should be deleted. On the other hand, we also believe that the commenters may be misinterpreting our intentions. If "independence" may only be maintained by means of constant interventions by ICF/MR staff through a program of active treatment, then under the terms of this regulation, the client is not independent.

Comment: One commenter inquired whether planned activities that allow a client to use a newly acquired skill for the purpose of maintaining the client's skill level, could be considered to be active treatment. The commenter suggested that to enhance and support a client's progress, active treatment should include maintaining the client's use of a newly acquired skill for a period of time in order to maximize independence as much as possible.

Response: We agree that in addition to helping a client acquire a new skill, a training program must also include a period of time during which the client has the opportunity to demonstrate that the new skill has been acquired. Assisting a client in using and improving an acquired skill is part of providing active treatment on a continuous basis, as required by § 483.440(d)(1), which is the standard relating to program implementation.

Comment: One commenter expressed concern about the proposed definition of active treatment because it includes services to prevent regression. The commenter believes that this will inappropriately allow facilities to provide, as active treatment, services to clients who function at the "brain stem" level, or whose care is geared primarily towards prevention of physical regression.

Response: We disagree. It would not be acceptable to establish an active treatment program in such a way as to preclude services from being provided to certain individuals because they have certain diagnostic labels. Moreover, current knowledge is not sufficiently advanced to allow us to preclude automatically clients with certain diagnoses from receiving active treatment because they have very severe physical or medical disabling conditions that limit their ability to understand, perceive, or to respond to their surroundings.

Comment: A few commenters did not understand how the proposed rule could allow FFP for services to "prevent regression", and yet deny FFP for services to "maintain generally independent clients". Commenters requested us to explain this apparent inconsistency.

Response: These regulations describe the types of services that constitute active treatment programs that an ICF/MR must furnish. Thus, it establishes the bases for determinations of whether or not a facility can be certified as an ICF/MF and qualify for FFP. The purpose of active treatment is to build continuously on skills already acquired and to teach new skills that will assist the client to function at higher levels of independence. This requires an active process of intervention. Since maintenance services essentially constitute a passive process, we proposed to exclude from the standard for active treatment those maintenance services which are for the purpose of providing generally independent clients with mere protective oversight (see § 442.440(b) of the proposal). As the presence of mere maintenance services increases and goal-directed learning for clients decreases, the overall nature of the facility shifts from an ICF/MR to a custodial care facility. Therefore, to be consistent with statutory intent, those facilities predominantly providing the services that we consider to be maintenance services and that are described at § 483.440(a)(2) of this final rule will not be considered to be providing active treatment and will not qualify, therefore, as an ICF/MR.

In recognition of the potential impact severe physical or medical disabilities can have on a client's ability to learn new skills, we proposed at § 442.440(a)(2) (§ 483.440(a)(1)(ii) in the final rule) to include those active interventions necessary to prevent or decelerate regression in the requirements for active treatment. An example of this is the application of specific stimulation techniques to the area of the mouth of a client with severe physical and medical disabilities. If this active intervention helps the client retain the ability to take food by mouth and decelerates the client's rate of reliance on tube feedings, then we will consider this a component of the active treatment program as described under these regulations.

Comment: Eleven commenters requested that we publish, in a timely manner, interpretive guidelines to explain how these regulations will be implemented. Also, they requested that we give greater emphasis to training both providers, and State and Federal surveyors. These commenters, although they supported the intent of the proposed rule, expressed concern that unless we provided needed training on the regulations, an acceptable balance would not be achieved between holding providers accountable for the program, and at the same time, allowing them the flexibility afforded by the new rule.

Response: We agree that training on the new regulations is essential for surveyors, and this is planned. Surveyors will need more detailed instructions concerning the meaning of the new rules and how they affect the survey process. Also, we plan to issue interpretive guidelines and surveyor procedures pertaining to these regulations.

Comment: One commenter objected to the proposed definition of active treatment because it did not include the terms "prognosis" or "professionally developed and supervised activities, experiences, or therapies". These terms are a part of the definition of active treatment that is used in the current rule at § 435.1009. The commenter stated that the use of these terms in the definition of active treatment would ensure that the development of active treatment programs would be based on state-of-the-art input, and would make clearer that professional staff are expected to participate in the treatment of clients.

Response: We did not use the term "prognosis" in the new standard for active treatment (at § 483.440(a)), because it is directly related to the medical model. We wanted to emphasize the developmental model and the importance of stressing client outcomes.

The phrase "professionally developed and supervised activities, experiences, or therapies" was not used verbatim in the new rule. However, the same requirement, in different language, is contained within the standards of this final rule relating to active treatment (§ 483.440(a)), individual program plans (§ 483.440(c)), program implementation (§ 483.440(d)), program and monitoring and change (§ 483.440(f)), and physician services (§ 483.460(a)).

Comment: One commenter asked for clarification concerning what was expected of a facility, in terms of the resources it would have to expend, in meeting the proposed requirement to assist clients in reaching their "maximum possible independence". The commenter wished to know if there was a limit on the amount of resources that a facility would have to expend in assisting a client to reach his or her maximum potential.

Response: A facility must meet all the requirements of the regulations. If a facility admits a particular client, it makes a commitment to meet that client's needs as determined by that client's assessment and IPP.

Comment: One commenter asked whether the certification survey that is conducted for an ICF/MR, also would include an evaluation of the programs provided to clients during the day if the programs were obtained by the facility from another agency. The commenter suggested that it would be fairer to the ICFs/MR if the day programs that they obtain from other agencies, are certified separately.

Response: We disagree. A facility is afforded flexibility by the regulations in determining the sources it will use to provide active treatment. It can provide services directly or obtain them from other qualified resources that are available in the community. If the facility obtains services from an outside source, the regulations require that it ensure that these services are effective and consistent with the client's overall plan. Therefore, services provided by outside sources must be coordinated by the ICF/MR to ensure that they are supportive of and consistent with services provided in the facility. Thus, the facility, as the discrete unit to be certified, will be held responsible for ensuring that all the services provided to its clients, including services such as day programs, provided by outside sources, meet the conditions specified in these regulations.

Comment: One commenter could not determine, from the proposed definition of active treatment, whether services, not included in the IPP, but which are needed to treat unforeseen or emergency health problems or behavioral disorders that interrupt or alter the IPP, could be considered to be active treatment.

Response: If an emergency occurs that affects the client's behavior or medical condition and a client's usual active treatment program cannot be implemented, the services that a facility must provide to address that emergency could be considered to be active treatment.

Comment: One commenter inquired how compliance with the proposed active treatment definition would be assessed in the following situations: (1) Clients are so severely disabled that they "seem" to be relatively inactive in their treatment; (2) clients are too active, and initiate too much in their treatment; or (3) clients participate actively in unacceptable day programs. This commenter expressed concern that the proposed definition of active treatment would result in providers devoting an extraordinary amount of energy to making worthwhile services "look right" in order to satisfy surveyors and maintain a viable funding source.

Response: Compliance with active treatment is not assessed in a vacuum. It can only be done as part of a process

that considers every aspect of the client's behavior from the functional assessment phase, up to and including, on-site observations of the client in structured and unstructured environments. Therefore, to address adequately the specific situations that the commenter describes, we would have to study a client's assessment and other relevant circumstances affecting the client's behavior.

We believe the regulations clearly require facilities to use resources to improve the skill levels of their clients and not merely to make services "look right". Throughout the regulations, we have emphasized the importance of results and outcomes, and have placed minimal importance on required processes.

S. Admissions, Transfers and Discharges (Proposed § 442.442; Final § 483.450(b))

Comment: Twenty-two commenters objected to the proposed requirement to allow a facility to admit only those clients for whom it can provide needed active treatment services. Several commenters expressed concern that the proposed standard could cause an adverse effect on clients in the following situations: court ordered commitments, emergency admissions, emergency respite cases, and delayed discharges due to lack of available alternative placements. Some suggested that the existing standard at § 442.418(c) that allows inappropriate admissions on a temporary basis should be retained. Others suggested that exceptions to the proposed standard should be allowed for up to 90 days.

Response: The statute at 1905(d)(2) of the Act stipulates that for FFP to be available for services provided to a client in an ICF/MR, the client must be receiving active treatment. Therefore, we are retaining in this final rule the proposed requirement that a facility must admit only those clients for whom it can privide needed active treatment services. We recognize that a facility may be required to admit individuals based on the order of a court. Although we do not have the jurisdiction to prevent the courts from ordering placements of clients who do not need active treatment in ICFs/MR, there is no implication that these clients automatically must be classified by Medicaid as being eligible for the ICF/MR benefit.

We must emphasize that the presence of any group of clients could call into question the overall nature of the services provided. If the primary purpose of the facility is no longer to provide services to the persons with mental retardation or related conditions, the facility would no longer qualify as an ICF/MR.

Comment: Several commenters recommended that the rule allow facilities to provide clients with active treatment services either directly or through administrative arrangements.

Response: We agree. Therefore, we have deleted the reference to clients "for whom the facility can provide needed services" that appeared in the proposed rule at § 442.440(b) so that the final rule at § 483.410(d) allows facilities the flexibility to provide or arrange for the provision of needed active treatment services. However, the facility remains responsible for all services furnished to its clients.

Comment: Eight commenters objected to the proposal to require that the preadmission evaluation must be completed or updated no more than 90 days before admission. Some of these commenters suggested alternative time frames such as: 365 days for developmental assessments, and 180 days for any assessment conducted on a severely or profoundly retarded individual. Others recommended that we eliminate any specific time frame, and only require that the facility use current assessment data.

Response: The intent of the proposed standard was to ensure that admission decisions were based on current and valid information. However, we recognize that to require that this information be updated or completed no more than 90 days before admission is somewhat arbitrary. Therefore, in accordance with our commitment to stress result-oriented standards, we have deleted the 90 day timeframe and have modified the rule, so that the final regulations require that admission decisions be based on currently valid assessments.

Comment: A few commenters expressed concern because the proposed rule did not specifically mention nutritional status as one of the items that must be evaluated as part of the client's comprehensive assessment. In their opinion, an evaluation of nutritional status should be included because it is essential to understanding the client's physical status.

Response: It was our intent that an evaluation of the client's nutritional status would be included as part of the comprehensive assessments. However, we agree that unless nutritional status is specifically mentioned in the rule, it may not be included as part of the client's assessment. Therefore, we have revised the regulations to state explicitly that nutritional status is one of the items that must be evaluated as part of the client's assessment that is used by the facility in making admission decisions. We note that in the final rule, we refer to this assessment as a "preliminary", not a "comprehensive", assessment since it is completed before the client's admission to a facility. Also, in the final rule, we have referred to the assessments conducted after admissions by the interdisciplinary team (proposed in § 442.444(c)) as comprehensive assessments.

Comment: About one-third of the commenters objected to the proposed rule at § 442.442(b)(3) and § 442.464(a)(1) because it would require that a physician be involved in the development of each client's IPP. Some of these commenters stated that physician involvement in the development of a client's IPP should be required only if it is determined that it is "appropriate" or "needed". Other commenters thought a nurse should be able to serve as a representative for the physician. Several commenters stated that physicians should be able to participate by means of a written report, or through the review and approval of the IPP within 7 days of its development. Finally, some commenters felt that this requirement was too aligned to the medical model and would increase the costs of the program without providing any significant benefit to the client.

Response: Section 1903(g)(1)(B) of the Act requires, in part, that services provided to Medicaid recipients in ICFs must be furnished under a plan established and periodically reviewed and evaluated by a physician. The regulations implementing the statute are at § 456.380. This section specifically requires a physician to establish a written plan of care for each applicant or recipient before he or she is admitted or before payment may be authorized. Consistent with the statute and § 456.380, this rule requires that a physician must participate in the establishment of a client's IPP.

In developing an IPP, the team must study all of the client's needs, both medical and non-medical, and how these needs are interrelated. Therefore, participation by a physician is required to ensure that an assessment of the client's medical status is thoroughly considered and addressed by the team as it develops the IPP. Thus, the intent of the rule is to require that a physician must have input into the development of the IPP, rather than merely review or approve the IPP. This input may be by means of written reports, evaluations, and recommendations. However, the input must be from the physician, and not from a person, such as a nurse, who

is serving as the physician's representative.

As the commenters pointed out, the requirement that a physician be involved in the development of each client's IPP appeared in two of the proposed standards. In order to eliminate duplication, we have deleted this provision under the standard concerning admissions, transfers and discharges and retained it under the standard concerning physician participation (§ 483.460(b)).

Comment: Thirty-one commenters requested clarification concerning how many days the facility has to develop the client's initial IPP. Twenty-eight commenters said it was unclear because the proposed standard at § 442.442(b)(3) would require that at the time of admission, a physician must be involved in the development of the initial IPP and seemed to conflict with the proposed rule at §442.444(d) that would allow up to 30 days after admission for the interdisciplinary team to develop the IPP.

Response: "At the time of admission" means during the admission process which extends from when the client is admitted to the time the initial IPP is completed.

Comment: Several commenters requested clarification of the meaning of the terms "transfers", "discharges" and "good cause".

Response: Interpretive guidelines will explain that transfer means the temporary movement between facilities or permanent movement between living units of the same facility. Discharge means the permanent movement of a client to another residence that is not under the jurisdiction of the facility's governing body.

Moving a client for "good cause" means for any reason that is in the best interest of the client. Also, we believe the client, family, or guardian should be provided with sufficient time to prepare for any move (except in emergencies). The exact amount of time cannot be specified, since it will depend upon the reasons for the move, the effect it will have on the client and the client's family or guardian, and the type of adjustments that will have to be made to prepare for the change. Moreover, the family and client usually should be involved in the initial stages of any decision to move a client, since these decisions generally should be part of a team process that includes the client and his or her family or guardian. Also, if a client has an advocate, the advocate should participate in the decision making process. We recognize that the decision to move a client often results in disagreements, uncertainties and conflicting interests. Therefore, we believe that it is important to require that there must be a good reason for deciding to move a client, and that the decision takes into consideration what best serves the interests and the needs of the client.

Comment: Several commenters asked if the facility is responsible for implementing the post-discharge plan. Other commenters asked if the client or guardian refuses to consent to the release of the client's discharge summary, would this prevent a client from being discharged. These commenters also asked whether a doctor's order was needed to discharge a client.

Response: A facility is required to develop a discharge plan of care for every client for whom it will no longer have responsibility as a result of the person moving to a new living environment. However, for purposes of certification, the facility would not be responsible for implementing this plan of care, since the client would be living in a new environment over which the facility has no authority or administrative control.

Discharge summaries are required to facilitate a client's transition to a new living environment. Therefore, if appropriate consent is given, a discharge summary should be made available to the new agency. However, failure to obtain consent for release of the discharge summary should not preclude a client from being discharged. Also, although an agency may decide to secure a physician's order before discharging a client, this is not required by the regulations.

T. Individual Program Plan (Proposed § 442.444; Final § 483.440(c))

Comment: Ten commenters requested further clarification concerning who should be appointed to the interdisciplinary team required by the proposed rule at § 442.444(a). They believe HCFA should specify the minimum number and type of individuals who must participate on an interdisciplinary team.

Response: In accordance with the proposed and final rules, a facility must establish for each client an interdisciplinary team that consists of those individuals who have the expertise required to design an effective plan that meets the needs of the client. Thus, the expertise that must be represented on a team is a case-by-case determination based on each client's needs as identified by the current comprehensive functional assessment. Therefore, we do not agree that the regulations should include more specific requirements regarding who should serve on an interdisciplinary team.

Comment: One commenter objected to the proposal at § 442.444 (c) and (d) that would require that the initial assessment of the client and the development of the IPP must be completed within 30 days after admission. This commenter suggested that 45 days after admission would be a more reasonable time frame for completing the initial assessment and the IPP.

Response: We disagree. The required time frame for completing the initial assessment and the IPP has been within 30 days after admission since the inception of the ICF/MR program. The 30 day requirement also is currently used in the ACDD standards. We believe it is commonly held by those who work in the field of mental retardation that 30 days is a reasonable length of time to complete the initial assessment and IPP for a newly admitted client.

Comment: Section 442.444(c)(5) of the proposed rule would require a facility to provide clients, "as applicable", with certain developmental assessments (including for example, assessments of affective development, vocational skills, and independent skills). Two commenters objected to the phrase, "as applicable", since they believe that all clients need to receive these assessments. Another commenter objected to this proposed provision because it would require an assessment of the independent living skills of all clients, even if it appears that the client will never be able to live in the community. An additional commenter wanted clarification as to what extent the team should identify a client's needs, if the services necessary to meet those needs are not available in the community.

Response: With respect to the use of the phrase "as applicable", we agree that it did not clearly convey what we intended. Therefore, we have moved it so that it only modifies the "vocational skills" assessment category.

Regarding the requirement to assess a client's needs, our intent is to ensure that each client receives a comprehensive functional evaluation that identifies all of his or her developmental needs, regardless of the availability of services to meet those needs. Thus, each client must receive a full and comprehensive assessment, irrespective of the availability of services to meet the client's needs, or the costs that would be involved in providing the services. Also, we believe that it is necessary to assess a client's independent living skills, even if it may

seem that the client will never be able to live in the community. This part of the assessment is important in order for the team to have a complete and comprehensive evaluation that identifies all of the client's needs and strengths. It has been our experience that facilities, which assess clients' independent living skills, often unexpectedly discover that clients may already possess some of these skills, having learned them prior to initial residential placement.

Comment: Sixteen commenters expressed concern that the list of assessment categories in the proposed rule at § 442.444(c)(5) did not include all of the categories needed to ensure that the assessments would be comprehensive. Thirteen of the commenters recommended that the following assessment categories be added to the list: feeding and menu planning by a registered dietitian; leisure and interpersonal communication skills; psychosocial skills; and social work needs. Also, one commenter recommended that the rule should require that the team must use only assessment procedures that have been demonstrated to be empirically reliable and valid.

Response: We do not agree that it is necessary to include in the rule all the additional assessment categories suggested by the commenters. However, to ensure that the assessments are comprehensive, we have amended the proposed language to include the following two additional assessment categories: nutritional status and social development. With the addition of these two categories, we believe the items listed will ensure that the clients receive comprehensive assessments. Also, it is our intent by this standard to require that the assessment data used by the team must be relevant and valid, and that the skills, abilities, and training needs identified by the assessment correspond to the client's actual status. Even though it is implicitly required that facilities must use assessment procedures that accurately describe the client's current status, we have amended the regulation at § 483.440(c)(3) explicitly to require accurate assessments.

Comment: Seven commenters asked whether the proposed requirement that the IPP state specific objectives for individual needs at § 442.444(d) meant that a separate IPP objective must be developed for each of the client's needs identified by the assessment or only for those needs that have been given priority. Two commenters stated that, because of the contingencies involved, projected completion dates could not be assigned accurately to IPP objectives. Therefore, they believed that the proposed standard at § 442.444(d)(2) should be changed to require review dates instead.

Response: The intent of the standard is to require that for each of the client's identified needs, there should be a corresponding IPP objective designed to meet that need. After all the objectives have been established, they should be ranked in order of importance as determined by the client's developmental needs. Objectives considered to be most important, or that need to be implemented before others can be accomplished, should be assigned priority. For each objective given priority, the team should assign a projected date by which it believes it can accomplish the desired outcome. Also, at least annually the team should review all of the client's performance data and the projected dates of completion for each objective, so that it can make any necessary revisions to ensure the accuracy of the plan. We believe developing projected dates of completion is an integral part of the planning process because it requires the team to determine what a client must do to accomplish a particular IPP objective, and to assess the client's potential for achieving a desired outcome.

Comment: One person objected to the proposal at § 442.444(d)(1) to require that IPP objectives be stated separately, in terms of a single behavioral outcome, since this would be too limiting. Two other commenters expressed concern that the proposal to require that the organization of IPP objectives reflect developmental progressions would force facilities to adhere strictly to child development standards.

Response: We have retained the requirement that IPP objectives be stated in terms of single outcomes because if multiple outcomes are used, client performance cannot always be clearly monitored or recorded. The requirement that IPP objectives be organized to reflect a developmental progression does not mean that clients must "learn" skills in the same sequence as children do as they grow up. The proposal specified and these final regulations will specify that the objectives be organized to reflect a developmental progression "appropriate to the individual".

Comment: Section 442.444(d) of the proposed rule would require that the IPP must include specific objectives that meet the client's individual needs. A few commenters suggested that we revise this section to require a facility to identify also the purpose or outcome it plans to achieve by accomplishing a series of IPP objectives. Another commenter suggested that the term "accomplishment" should be used in place of the word "performance" in the proposal to require that IPP objectives be expressed in behavioral terms that provide measurable indices of performance. This commenter suggested that by replacing the word "performance" with the word "accomplishment", we would require facilities to provide more exact indices for measuring the client's rates of progression or regression.

Response: We do not agree that a facility should be required to identify the outcome or purpose it plans to achieve by accomplishing a series of IPP objectives. We believe such a requirement would be too prescriptive. However, we propose to require, and the final rule retains the provision, that the IPP must state what planned sequence of specific objectives has been established to meet the client's needs. For the facility to establish a planned sequence of objectives for each client, it will have to consider the outcomes and goals it plans to achieve. Also, we do not agree with the suggestion that the term "accomplishment" be substituted for the term "performance". We believe that the term "performance" adequately conveys the concept that a facility must be able to measure accurately a client's progress or regression.

Comment: One commenter objected to the proposal at § 442.444(d)(6) to require that the IPP include the programs and strategies to be used in achieving plan objectives. This commenter suggested that, since the IPPs are not always found in locations accessible to direct care staff, we should require instead that the programs and strategies be available to direct care staff, rather than require that they be included or located in the IPP.

Response: We agree that the strategies and programs that are to be used to achieve IPP objectives should be kept in a location that is readily accessible to staff. This was our intent in requiring that the strategies and programs be included within the IPP. However, as a result of the comments, we have deleted the requirement that the progarms and strategies must be included within the IPP. The final regulations at § 483.440(c)(6)(ii) will require that program strategy information be available to relevant staff and that the IPP identify where this information can be found. It will be left to the discretion of the facility to arrive at an effective means of accomplishing this.

Comment: One commenter expressed concern about the proposed rule at § 442.444(e) that would require a facility to emphasize personal care skills in IPPs. The commenter mentioned that some clients, because of extreme and permanent physical limitations, might never be able to achieve the physical dexterity necessary to perform personal care skills. In these cases, the commenter suggested that for a client to describe or communicate his or her basic needs to a caretaker, may be the highest level of independence and self-help that the client can achieve.

Response: We agree. The proposed list of examples of personal care skills (bathing, self feeding, etc.) that must be included in the IPP, for those clients who lack them, did not include "communication of basic needs". Therefore, we have added this skill to the list.

Comment: Eighteen commenters questioned the proposed regulation at § 442.444(e) that would require individual program plans to emphasize personal care skills. These commenters stated that personal care skills are not the only types of skills or training that should be emphasized in the IPP. Moreover, they believed the rule should require that the IPP must include any skill necessary to help the client achieve greater independence. They also questioned what was meant by the term "developmentally incapable" as used in the proposed requirement that the IPP emphasize personal care skills until it has been demonstrated that the client is developmentally incapable of acquiring them.

Response: To ensure that all the items included in an IPP are given sufficient importance, we have modified the proposed language. Although in the final rule, we will not require that emphasis be placed on personal care skills, we will require that the IPP include training in personal care skills for those clients who lack them. Also, we have retained the proposed language that identifies those personal care skills that are most fundamental to a person's dignity, privacy, and independence, and that must be taught to those clients who are capable of acquiring them.

We have revised the proposed rule at § 442.444(e) (§ 483.440(c)(6)(iii) of this final rule), which would have required that a client must be trained in personal care skills until he or she has acquired these skills or it has been demonstrated that he or she is developmentally incapable of acquiring them. The phrase, "until the client has acquired these skills," has been deleted, because the single concept that we wanted to convey was that clients, should receive training in personal care skills until it has been demonstrated that they are "developmentally incapable" of acquiring them. The demonstration that a client is "developmentally incapable" of acquiring personal care skills, we believe must be made by the interdisciplinary team based on its assessment of the client's developmental strengths and needs.

Comment: Seven commenters expressed concern about the proposed requirement at § 442.444(b) that parents or guardians must participate in the interdisciplinary team meetings unless their participation is unobtainable or inappropriate. Some commenters felt that participation by parents or guardians should be encouraged rather than required. Other commenters suggested that the team should be required to discuss with parents what is to be included in the IPP, but that parents should not be required to attend team meetings.

Response: The purpose of active treatment is to assist the client is achieving maximum possible independence. For this to be done successfully, we believe that direct participation in team meetings by the client, the client's parents (if the client is a minor) or appointed legal guardian should be required, unless inappropriate. If the client is a minor or an adult who has been adjudicated incompetent, then direct participation by the parent or an appointed legal guardian is essential to ensuring that the client's interests are given sufficient consideration. In the interest of the client, the participation of the parents of minors, and the legal guardians of those adjudicated incompetent, should be solicited to the maximum extent possible. Our experience has shown that clients are generally willing to have their parents participate in the planning process. However, if the client is an adult who is competent to make decisions and who is not adjudicated, parents may not participate in the interdisciplinary process if their participation is opposed by the client.

Comment: Four commenters expressed concern that the proposed rule at § 442.444(d), which would require the IPP to state specific objectives, only referred to training objectives. Therefore, it would not require that other special activities and interventions needed by the client be specified in the IPP.

Response: We have revised the proposed language so that the final rule, at § 483.440(c)(6), requires the IPP to describe all the relevant interventions that are needed to support the client towards independence.

Comment: Three commenters made recommendations about the proposed rule at § 442.444(g), which would require that a copy of the IPP must be made available to all relevant staff and to the client's family or guardian. One commenter suggested that a written explanation or interpretation of the contents of the IPP, using clear and non-technical language, should be sent by the social worker to the client's family. Another commenter stated that a copy of the IPP should be made accessible only to those families requesting it. One commenter recommended that the rule require that facilities must comply with State and Federal privacy laws when making information available to staff or families.

Response: We have retained the proposed language that would require that a copy of each client's IPP must be made available to the client's parents or guardian. We also have added a requirement to the final rule that the IPP also must be made available to the client. While the suggestion to send an explanation or interpretation of the IPP to the family has merit, we believe that as a requirement in the regulations, it would be too prescriptive. Nevertheless, although it is not required, an agency may mail a copy of the IPP to them. We do not believe it is necessary to make an additional reference to State and Federal privacy laws, since these regulations at § 483.410(b) require compliance with all applicable Federal, State and local laws.

Comment: Two commenters expressed concern about the proposed rule at § 442.444(f), which would require multihandicapped clients to spend a major portion of each day out of their beds and outside the bedroom area, moving about by various methods and devices whenever possible. The commenters stated that this requirement should be waived if contraindicated by the qualified mental retardation professional or by the physician.

Response: We disagree. We believe that except for those clients who are acutely ill (such as those who are hospitalized or incapacitated by a short term illness), all clients should be out of bed and outside their bedroom area for as long as possible each day. Mentally retarded or developmentally disabled people are not sick because they are mentally retarded or developmentally disabled. Therefore, they should not be treated as sick people unless they become ill. Consistent with the developmental model, to the extent possible, the routines and schedules of a client's day should resemble those of any non-handicapped person.

U. Program Implementation (Proposed § 442.446; Final § 483.440(d))

Comment: The proposed regulation at § 442.446(a) would require a facility to implement a "continuous" active treatment program for each client. Forty-seven commenters requested a clarification concerning what is meant by a "continuous active treatment program." These commenters expressed concern that this phrase seemed to mean that facilities would be required to provide every client with 24 hours of structured programming each day, and that the clients would have no time during the day for recreation and unstructured activities. They stated that such a requirement was unreasonable and would make it impossible for clients to live by a normal schedule. Therefore, they recommended that we delete the word "continuous," and instead specify the minimum number of hours per day that active treatment must be provided.

Response: We disagree. The word "continuous," as used in the proposed rule, was meant to convey the principle that active treatment is not the mere provision of structured training and treatment services within certain scheduled time intervals. The word "continuous" was used to convey the concept that active treatment is not a static program, but an ongoing process that provides clients with needed training and treatment through appropriate and competent interactions and interventions that are applied to the client's structured and unstructured activities, in both formal and informal settings, and in sufficient number and frequency to assist the client effectively in accomplishing IPP objectives. Because active treatment is an ongoing and continuous process, it is not possible to specify the minimum number of hours per day that active treatment is required, or the maximum length of time allowed between active treatment interventions.

Comment: Two commenters asked what time frame was intended by the proposal at § 444.446(a) to require the facility to begin implementing active treatment as soon as the interdisciplinary team has formulated a client's IPP. They were uncertain whether implementation had to begin immediately following the IPP meeting, or whether the facility could wait until the IPP document had been written.

Response: The facility must begin implementing an active treatment program for a client as soon as the client's team has determined the type of program or plan of action that the client needs. Our intent is to ensure that a client begins receiving active treatment as soon as possible after the team identifies the client's needs through a comprehensive assessment. Thus, a facility should not delay implementation of active treatment because the written document identifying the contents of the IPP has not been completed.

Comment: One commenter requested us to amend the proposed rule to require, between the time of admission and the initial IPP meeting, a daily structured program for each newly admitted client.

Response: We disagree. The time immediately following admission should be primarily for the purpose of assisting the client to become adjusted and acclimated to his or her new living environment, and for the facility to conduct the comprehensive functional assessment of the client's status as required by § 483.440(c). Therefore, we do not believe it would be appropriate to require a daily structured program during this period of time.

Comment: Several commenters asked how the active treatment schedule, required by the proposed regulations at § 442.446(c), is different from the IPP. Ten commenters objected to the proposed rule at § 442.446(c) that would require that the active treatment schedule be attached to and distributed with the IPP. They stated that an active treatment schedule is meaningless unless it is updated continually, and the amount of paperwork that would be required to distribute copies of the active treatment schedule and continually to update these copies would be excessive and counterproductive.

Response: The IPP is the vehicle that a facility must use to develop, structure and implement an active treatment program for a particular client. It states the specific objectives and behavior outcomes that the team plans for the client to achieve. As an adjunct to and in support of the IPP, the team also must establish an active treatment schedule that shapes the basic structure of the clients experience throughout the day. The schedule gives form to the program and guides the work of the staff and clients and is, therefore, a vital organizational tool in the process of implementing an active treatment program.

Also, as recommended by the commenters, we are no longer requiring that the active treatment schedules be distributed with the IPPs. Instead, in keeping with our intent to use outcome oriented standards, we have modified the proposed language, so that the final rule at § 483.440(d)(2) will require that active treatment schedules must be readily available for review by all relevant staff.

Comment: Eleven commenters objected to the proposal at § 442.446(d) to require that an IPP be implemented by all staff who work with the client. These commenters stated that every staff member who works with a client is not qualified to implement every portion of the client's IPP. Therefore, the rule should require only that there be an "awareness" of the IPP by all staff.

Response: We cannot accept this comment. The intent of the regulation is to require that all staff who have regular contact with clients, be knowledgeable of the IPPs for these clients and participate in implementing them. For example, if a client spends time regularly with any staff member, then the facility is responsible for ensuring that during this time, the staff member is able to provide needed interventions or reinforce acquired skills in accordance with the IPP. This is how the facility can implement a *continuous* active treatment program.

Comment: To ensure that direct care staff are knowledgeable about how to implement the IPPs, one commenter suggested that we require them to meet with the qualified mental retardation professionals to discuss and review the IPPs.

Response: While we agree that direct care staff should be as knowledgeable as possible about the IPPs, we believe the commenter's suggestion of requiring meetings between the qualified mental retardation professionals and direct care staff is too prescriptive.

V. Program Documentation (Proposed § 442.448; Final § 483.440(e))

Comment: Several commenters requested clarification concerning the proposed requirement at § 442.448(a) that client performance in relationship to the IPP was to be documented in measurable terms. These commenters could not determine whether the regulation required documentation consisting of raw data, progress notes, or data summaries. Furthermore, eight commenters asked how often this documentation was to be completed.

Response: The intent of the proposal was to require that raw data be kept on each client's performance that would indicate whether or not IPP objectives were accomplished. However, the comments indicate that this intent was not clearly conveyed. Therefore, the proposed language has been revised to include the word data. The final regulation at § 483.440(e)(1) will require that "Data relative to accomplishment of the criteria specified in client IPP

objectives must be documented in measurable terms." Nevertheless, in addition to the raw data, a facility may decide to use supplementary methods, such as progress summaries, to document client performance. Also, we believe that the facility should determine how often to document the data, as long as the data are documented frequently enough to measure effectively a client's performance.

Comment: One commenter asked what specific types of client performance data had to be collected to meet the proposed program documentation requirements at § 442.448(a).

Response: The facility has the flexibility to determine the type of data it wishes to collect, as long as the data are relevant and can be used to measure effectively the accomplishment of the objectives specified in each client's IPP.

Comment: One commenter inquired whether or not the data required by the proposal are to be collected on all IPP objectives or only on those for which training is currently being conducted.

Response: Since the purpose of the data is to measure client performance, data must be collected only on those objectives for which training is being currently provided.

Comment: Twenty-six commenters objected to the proposed language at § 442.448(b) that states "the facility must document that significant developmental, behavioral and social objectives . . . have taken place." Some of the commenters thought this language was confusing and submitted examples of substitute language which they felt would clarify the meaning of the proposed requirement.

Response: The proposed language has been revised to clarify our meaning. The final regulation at § 483.440(e)(2) will require that the facility must document significant events that are related to the client's IPP and assessments, and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

W. Program Monitoring and Change (Proposed § 442.450; Final §§ 483.430(a) and 483.440(f))

Comment: Fifty-two commenters expressed opinions about the qualifications we proposed at § 442.450(a), for the position of qualified mental retardation professional. The proposed regulations state that each qualified mental retardation professional must have at least one year of experience working directly with individuals with mental retardation or other developmental disabilities, and be either a physician, a registered nurse, or have at least a bachelor's degree in one of the professional service categories listed in the proposed regulations at § 442.460(e). One commenter felt that a master's degree should be the minimum requirement for any qualified mental retardation professional, since they are responsible for monitoring the quality of professional services provided to clients. Another commenter suggested that any educational degree, accompanied by acceptable work experience, would be sufficient to qualify an individual to perform qualified mental retardation professional duties. Typical of another group of commenters was the strong opinion that requiring "artificial" credentials did not guarantee acceptable performance, and demonstration of competencies should be stressed instead.

Response: We believe that a certain level of professional qualification is required for qualified mental retardation professionals because of their important role in supervising the delivery of care and assisting clients in meeting their developmental, behavioral and social needs. Thus, we have retained the proposed requirements for a qualified mental retardation professional. However, in the final rule, we have specified, in order to clarify our intent, that doctors of osteopathy are qualified to be qualified mental retardation professionals as well as doctors of medicine.

Comment: Fourteen commenters objected to the proposed requirement at § 442.450(c)(1) that the interdisciplinary team must approve all changes made to the objectives of a client's IPP. These commenters expressed concern that this requirement would increase administrative processing time and costs without resulting in any significant gains for the clients.

Response: The intent of the proposed rule was to ensure that the IPP would be reviewed regularly and that the team would approve any changes that were made to the individual objectives of a client's IPP. We agree that this proposed requirement could be too prescriptive, especially since we have retained the proposed requirement (at § 483.440(f)(1) of this final rule) that the IPP be reviewed and revised whenever a client accomplishes an objective, or is regressing or losing skills, or failing to progress. Therefore, we have revised the proposed language. The final rule will designate the qualified mental retardation professional as the agent responsible for reviewing and revising the IPP as necessary. This is consistent with the qualified mental retardation professional's responsibility to integrate, coordinate and monitor the IPP. However, the interdisciplinary team, in accordance with the final rule at § 483.440(f)(2), is responsible for revising each client's IPP, as appropriate, and for reviewing each client's comprehensive functional assessment for relevancy, at least annually, and for updating it as needed.

Comment: Twelve commenters objected to the proposed regulation at §442.450(c) because it does specify how often the IPP should be reviewed between the required annual reviews. These commenters asserted that facility staff could not be depended on to initiate reviews or revisions of the IPP when necessary (such as when objectives have been completed or when strategies are proven ineffective), unless the regulation requires them to do so. They suggested several examples of specific time intervals that they thought should be included in the rule to indicate how often IPPs must be reviewed.

Response: We do not believe it would be appropriate to specify in the rule how often the IPP must be reviewed between the required annual reviews, since the number of times an IPP should be reviewed depends on many factors. As stated earlier in this preamble, § 483.440(f)(1) of this final rule will require the qualified mental retardation professional to review and revise the IPP as necessary, including, but not limited to, when the client has successfully completed an objective, or is regaressing or losing skills, or is failing to progress, or is being considered for training towards new objectives. Thus, because there are many factors that determine when a review is needed, we do not agree with the commenters' suggestion.

Comment: Nine commenters objected to the proposal at §442.450(a)(1) to require qualified mental retardation professionals to be employees of the facility. These commenters expressed the view that it may be cost prohibitive for facilities, which serve very few clients, to hire someone full-time for this function, especially when the service of a qualified mental retardation professional could be obtained more cost effectively through suitable arrangements with an outside agency.

Response: We agree. Although the qualified mental retardation professional occupies a key position in terms of monitoring and overseeing a client's IPP, and we believe this role is central to the statutory active treatment requirements, we do not believe it is administratively feasible or cost

efficient to require that the qualified mental retardation professional be directly employed by the facility.

Comment: Seventeen commenters expressed numerous opinions about the requirement proposed at § 442.450(e)(1), that a specially designed outside committee must approve individual behavior management programs that involve a potential risk to the client. Comments ranged from suggestions for deleting this requirement totally, to giving the committee more authority and autonomy to do its job and requiring the committee to perform its oversight function at least quarterly. However, the concern expressed most frequently by commenters was that the membership of the committee should include individuals who have the expertise necessary to make appropriate decisions regarding the facility's practices and programs.

Response: The intent of the proposed regulation was to require a facility to establish a committee or committees that would serve as an advocate for the protection of the rights of individual clients, especially as they may be affected by behavior management programs. Under the proposed rule, membership was to include representatives from the facility's staff, clients, parents, and persons with no ownership or control interest in the facility. However, we agree that the committee also should include a person or persons who are knowledgeable about current practices for controlling inappropriate client behavior. Therefore, we have revised the proposed language, so that the final rule at § 483.440(f)(3), will require that the facility must include on the committee the participation of a qualified person or persons who have either experience or training in contemporary practices to change inappropriate client behavior.

Comment: A few commenters inquired whether the required outside committee have to review *all* IPP programs, or only those IPP programs that posed a potential risk to the client.

Response: The final rule will require the specially constituted committee to review at least those programs and facility practices that pose a potential risk to clients. However, as stated in the final rule, the committee is free to review any area it believes needs to be addressed.

Comment: One commenter wanted to know if a behavior management program that involved potential risks for a client, could be implemented *before* it was approved by the outside committee.

Response: The intent of the regulation is to require the approval of the outside committee before such programs are implemented. This is to ensure that if there are risks to the client that are unwarranted, the programs will not be implemented.

Comment: One commenter inquired whether or not access to confidential client information by the outside committee's non-staff members would place the facility out of compliance with the proposed rule at § 442.432(b) that would require the facility to keep all client information confidential.

Response: The committee needs to know relevant client information to function properly. Therefore, the facility could ask members to sign an agreement to maintain confidentiality if there is a concern in this regard.

Comment: Fourteen commenters requested clarification about the proposed language at § 442.450(e)(2) that would authorize the outside committee to review, monitor and make suggestions concerning any areas that it believes need to be addressed. Some of these commenters expressed concern that the committee might try to run the facility or that it might duplicate the role of other existing facility committees. Other commenters suggested that the role of the outside committee should be limited to "client risk" issues exclusively.

Response: The proposed rule would require a facility to establish a "specially constituted committee or committees," to protect client rights. The intent was to allow a facility the flexibility to decide whether to use one advisory committee or to use as many committees as it chooses, as long as at least one committee was established to protect client rights. As intended by the proposed regulation, the role of the outside committee or committees, was not to dictate facility policy or control management. Rather, the role of the committee was to review facility practices and programs in order to make recommendations concerning the protection of client rights. To clarify our intent in this area, the final rule at § 483.440(f)(3)(i) states that the role of the committee is to review, monitor and make suggestions to the facility about its practices and programs. It also requires that individual programs that involve risks to client protections and rights must be approved by the committee.

Comment: Three commenters supported the proposed rule at § 442.450(f) that would allow the requirement for an outside committee to be waived if State law or regulations provide equivalent client protection and consultation. However, the commenters suggested that the rule also should allow this requirement to be waived if an applicable court decree requires oversight mechanisms which result in equivalent client protections. These commenters pointed out that, in some instances, the oversight mechanisms established by judicial decrees are far more stringent than those required by the proposed rule.

Response: We agree. We have amended the proposed rule so that the final regulation at § 483.440(f)(4) states that the provisions of the rule that pertain to the specially constituted committee may be modifed, if, in the judgment of the survey agency, a court decree provides for equivalent client protection and consultation.

Comment: Six commenters objected to the proposed rule at § 442.450(d) that would require the facility, at least annually, to reassess the client and make revisions to the IPP. These commenters stated that it would be wasteful to require an annual assessment if the client's status had not changed since the last assessment. They suggested that we allow the team to determine how often it is necessary to reassess the client.

Response: We agree. The language of the proposed rule did not convey clearly out intent to allow the team to determine whether a client needs a new assessment. To clarify out intent, the final rule at § 483.440(f)(2) will state that, at least annually, the assessment of each client must be *reviewed* by the interdisciplinary team for relevancy and updated as needed.

Comment: One commenter inquired whether the annual review of the IPP required by the proposed rule at § 442.450(d) has to be conducted on the 365th day after the last review, by the 365th day after the last review, or within some other time interval.

Response: The interpretive guidelines will explain that to meet this requirement, the annual review of the assessment and the IPP generally must be completed by the 365th day after the last review. This is consistent with current regulations on utilization control at § 456.360(b)(2)(i).

Comment: Four commenters requested that HCFA specify in the rule the maximum number of clients that a facility would be allowed to assign to the caseload of a qualified mental retardation professional. These commenters felt that caseloads have been overextended in the past. They suggested that unless we specified what we consider to be an acceptable ratio of qualified mental retardation professionals to clients, we would continue to perpetuate paperwork as the primary function of the qualified mental retardation professional.

Response: We disagree. Each client's active treatment program must be effectively integrated, coordinated, monitored, reviewed, and revised, as necessary, by a qualified mental retardation professional. The number of qualified mental retardation professionals that a facility requires to provide these services effectively will vary depending on several factors including, but not limited to, how many clients it has, the needs of these clients, the number and qualifications of additional staff members, and other duties that may be assigned to the qualified mental retardation professionals. Thus, since these types of factors must be considered on an individual basis before a determination can be made, we do not believe it is feasible to attempt to specify in the rule the maximum number of clients that may be assigned to a qualified mental retardation professional. However, in the final rule, we have stated at § 483.430(b)(2) concerning professional program services that qualified professional staff must be sufficient in number to implement the IPP.

Comment: One commenter wished to know if a client's individual program plan could be coordinated and monitored by more than one qualified mental retardation professional.

Response: The interpretive guidelines will explain that a client's IPP may be coordinated and monitored by more than one qualified mental retardation professional. However, there must be one qualified mental retardation professional who is assigned primary responsibility for coordinating the client's IPP. This qualified mental retardation professional is responsible for serving as the primary advocate for the client and for ensuring that monitoring functions delegated to other qualified mental retardation professionals are completed appropriately.

Comment: One commenter asked if the regulations required that a person designated as a qualified mental retardation professional had to do the duties of a qualified mental retardation professional exclusively, or could the person be allowed to perform other professional staff duties in addition to the qualified mental retardation professional duties.

Response: We believe that it is up to the facility to allocate staff resources in whatever manner it believes is necessary as long as it ensures that the qualified mental retardation professional function is performed effectively for each client.

X. Behavior Management (Proposed §§ 442.452, 442.454, 442.456, 442.458; final § 483.450)

The four sections of the proposed rule dealing with management of client behavior, §§ 442.452 through 442.458, received the largest volume of comments overall. Pertaining to these four sections, we received comments from 83 different commenters. Most of the individual commenters raised issues that apply to several of the proposed sections. Due to the cross-cutting nature of these issues, we have grouped these four proposed sections together for the purpose of responding to public comments.

Comment: A significant number of commenters expressed concern that the way the proposed §§ 442.452 through 442.458 were organized was confusing and lacking sufficient safeguards to protect clients and ensure good practice. Several of these commenters submitted suggested language that would substantially revise the entire four sections. Many of the commenters also referred to the statement in the preamble of the NPRM, that our intent, in issuing new regulations, was to be consistent with accreditation standards published in 1983 by the Accreditation Council on Services for People with Developmental Disabilities (ACDD). They suggested that to the extent possible, we use the language of the ACDD standards in the regulations.

Response: We agree that the requirements of these four sections needed to be revised for purposes of clarification. To express our intent more clearly, we have reorganized the four standards pertaining to the management of client behavior into five. These are grouped under the condition of participation at § 483.450 of the final rule. In revising the proposed rule, we used in some instances the language of the ACDD directly, and in other instances, we borrowed heavily from the commenters.

Comment: Six commenters criticized §§ 442.452 through 442.458 of the proposed rule because in their opinion, the techniques mentioned in these sections (for example, time-out devices, aversive conditioning, drugs for behavior management, and physical restraints) did not reflect the "state of the art" technology used in the field of mental retardation and developmental disabilities.

Response: We made no attempt to determine what constitutes state-of-the-art techniques in the field of mental retardation. Instead, we attempted to ensure that whatever techniques are utilized by facilities to protect clients from abusive or neglective practices are appropriate.

Comment: Nine commenters objected to §§ 442.452 through 442.458 of the proposed rule because they believe these sections are too negative. They stated that the use of positive approaches, including positive reinforcement, known to be effective in managing inappropirate client behavior, was not required nor emphasized sufficiently. They also requested that the rule include a description of those positive principles that a facility should follow in the development of its policies, procedures and specific programs regarding the management of inappropriate client behavior.

Response: The purpose of the entire active treatment section of the final rule is to require facilities to provide positive environments and training methodologies that will result in clients acquiring more adaptive behavior. Also, the final rule incorporates several suggestions that were made by commenters on how to strengthen and emphasize the use of positive approaches to behavior management. For example, § 483.450(a)(ii) of the final rule regarding conduct toward clients, requires the facility to emphasize and accommodate client choice, self-determination, and self-management in the daily decision-making process. Also, in the final rule § 483.450(b), regarding management of inappropriate client behavior, requires not only that the facility guarantee that it will use the least restrictrive/least intrusive techniques that are effective to manage client behavior, but also that the client's safety, welfare, and human rights will be adequalty protected at the same time.

Comment: One commenter objected to the proposed rule because it allows use of aversive techniques to manage client behavior. The commenter stated that research evidence does not support the efficacy of aversive, behavioral interventions. Also, the use of aversives to manage client behavior raises disturbing legal and ethical issues, and diminishes the dignity of the client. Furthermore, the commenter suggested that HCFA specifically prohibit the use of any technique to manage inappropriate client behavior that would deprive clients of nutritional food or hydration, or that would inflict pain, whether physical or psychological, or that would use chemical restraint in place of programming.

Response: Varying opinions exists on the efficacy of these techniques. Rather than prohibiting techniques, our role is to ensure that if aversives are used, adequate safeguards are included.

Sometimes these techniques are more successful in halting severe, self-injurious behavior and other grotesque behaviors, than more positive methods would be. However, we do believe that client protections are necessary to safeguard clients against the misuse of these techniques. As originally proposed, to ensure that these techniques are properly used, the final rule at § 483.420(d)(1)(ii) prohibits staff from disciplining a client by withholding adequate food or hydration. The final rule at § 483.450(b)(3) will require that any technique used to manage inappropriate client behavior (including drugs) cannot be used as a substitute for an active treatment program. The final rule at § 483.450(e)(2) will require that drugs used for control of inappropriate behavior must be used only as an integral part of an IPP. It also will prohibit at § 483.420 (a)(5) and (d)(1)(i) physical, verbal, sexual or psychological abuse or punishment.

Comment: Seventeen commenters criticized our interchangeable use of the terms "behavior management" and "behavior modification," since the terms are not synonymous. These commenters stated that behavior modification is only one specific model within the field of behavior management, yet as used throughout the proposed § 442.454, behavior modification appears to encompass every type of program designed to alter or shape behavior. For example, in the proposal, § 442.454(b) refers to the use of drugs for "behavior modification purposes", and § 442.458(b) refers to "drugs used for behavior management".

Response: We agree that the two terms are not synonymous, and as used throughout the proposed rule, could cause confusion. Our intent in the proposed § 442.452 was to regulate "conduct toward clients by facility staff," and our intent in the proposed § 442.454 was to regulate the "management of inappropriate client behavior." Thus, we have renamed these standards accordingly. Also, in the final rule, the terms "behavior management" and "behavior modification" are not used in these specific standards, and other editorial changes have been made to describe our intent more clearly.

Comment: Seven commenters urged HCFA to include provisions in the final rule that would prohibit facilities from using restrictive techniques as part of an ongoing "program" or from making routine "programmatic usage" of these techniques, unless there is evidence to justify such usage. These commenters believe that such ongoing "programs" or "programmatic usages" of restrictive techniques are viewed by staff as a "standing order," to allow these techniques to be used. Therefore, they believe such "programs" are used to justify putting clients back into restrictive devices, even though their behavior does not warrant this. They believe also that the use of such "programs" makes it almost impossible to track the effectiveness of less restrictive techniques; and encourages teams to use aversive techniques in anticipation of behavior that may never happen or may happen only infrequently.

Response: We agree with the commenters' concerns. Restraining devices and time-out rooms should not be used to suit the convenience of the staff, to accommodate staffing shortages, or to substitute for effective active treatment. Therefore, we have revised the proposal to state at § 483.450(b)(3), that techniques to manage inappropriate client behavior must never be used for staff convenience or as a substitute for an effective active treatment program. Also, the final rule, at § 483.450(b)(5), will prohibit the use of standing or as needed programs to control inappropriate behavior; at § 483.450(d)(4) it will require that clients must be released from restraining devices as quickly as possible; and at § 483.450(d)(1)(ii), it will stipulate that restraints may not be used as an emergency measure unless the client's behavior threatens self or others.

Comment: Some commenters requested that, for purposes of emphasis, we move to the beginning of § 442.454, the requirement proposed at § 442.454(f), that less restrictive methods of managing behavior must be attempted and documented to have failed before more restrictive techniques, are employed. They believed that changing the location of this requirement would highlight for facilities that the use of positive behavior shaping techniques should always be the first method of choice.

Response: We agree that emphasis should be focused on the importance of using positive means for changing behavior. Thus, the proposal has been revised so that the standard at § 483.450(b) concerning the management of inappropriate client behavior will include the requirement that a facility must rank all the interventions it wishes to use to manage inappropriate client behavior along a hierarchy ranging in order from the most positive or least intrusive procedures, to the least positive or most intrusive procedures, and then implement them in that order. Moreover, a program using more restrictive techniques may not be used before programs using less intrusive techniques have been demonstrated to be ineffective.

Comment: Three commenters felt that the proposed rule at § 442.454(f), which requires facilities to demonstrate that more positive, less intrusive techniques are ineffective, before using more intrusive procedures, was too strict and did not allow a facility to use state-of-the-art technology to manage client behavior. Commenters suggested that this requirement should be waived if the team determines that less restrictive techniques of managing behavior would be unlikely to succeed.

Response: We agree that the team should determine what techniques are to be used with clients. However, the intent of the final rule, at § 483.450(b), is to protect clients' rights, and to ensure that the least restrictive technique, which can effectively change the client's behavior, is employed. Thus, the team is responsible to establish sufficient documentation and clear evidence to justify the use of a more restrictive technique. This standard does not take away the team's discretion, it only requires that there be evidence to support the team's decision not to use a less restrictive technique.

Comment: Sixteen commenters requested that we include a section in the final rule to define the techniques relevant to managing client behavior and specify the conditions under which these techniques can or cannot be used. Examples of techniques that commenters suggested be included in this section are: time-out; aversive conditioning; aversive techniques; physical restraints; drugs for behavior management; corporal punishment; psychological punishment; behavior modification; and behavior management.

Response: We do not agree that the regulations should specify what techniques a facility may use to manage client behavior. However, in the interpretive guidelines, we plan to provide more information concerning the meaning and use of behavioral management techniques. It should be noted that some of the terms that the commenters have requested us to define, have been deleted from the final rule.

Comment: Thirty commenters objected to our use of the term "physical restraint" throughout the proposed § 442.456 dealing with physical restraints. Commenters expressed concern that unless the term "physical restraint" was defined, the requirements pertaining to the use of physical

restraints could be applied inappropriately to devices that assist in the positioning of clients or facilitate the implementation of time-limited medical procedures. The commenters suggested that we define the term "physical restraint" and that separate provisions be included for positioning and medical restraining devices.

Response: Interpretive guidelines will define a physical restraint as any physical or mechanical device that the client is unable to remove easily, and that either restricts the free movement of the client, or the movement or normal function of a portion of the client's body, or deprives the client access to a portion or portions of the client's body. It was not our intent that the proposed physical restraint requirements should be applied to devices used for client positioning or for medical procedures. Therefore, we have accepted the commenters' criticism that this needs to be clarified, and we have made two revisions. In the final rule, § 483.440(c)(6)(iv) concerning IPPs specifically provides for the use of mechanical supporting devices. The other revision is located at § 483.450(d)(1)(iii) of the final rule, which allows facilities to use restraints as time-limited, physician prescribed, health-related, protective devices.

Comment: Two commenters requested clarification concerning who can authorize the use of physical restraints for a client. The commenters suggested that only a physician, or a physician together with a qualified mental retardation professional, should be allowed to authorize the use of physical restraints.

Response: We have modified the proposed requirement that the facility identify who can authorize restraints. The final rule at § 483.450(d) allows the interdisciplinary team to authorize the use of physical restraints as part of an IPP. The rule also recognizes that on occasion, emergency usage of restraints might need to occur. We believe that it would be too prescriptive to dictate to a facility who the authorizing person must be for emergency usage.

Comment: Nine commenters objected to the proposed rule at § 442.456(c) because they believe that written authorizations for restraints not used as part of a behavior modification program, should not be allowed to be in effect for up to 12 hours. These commenters also objected to the proposed rule at § 442.456(h), because they believe facilities should be required to release clients for more than a ten minute period for each two hours that a restraint is applied. They maintain that any client placed in a restriant for two straight hours, would forget why the restraint had been applied. They were especially concerned about how this would affect a client who was placed in a restraint for two or more consecutive two hour periods. They thought that such consecutive restraint applications would constitute punishment. They opposed allowing written authorization for restraints not used as part of an integrated program, to be in effect for up to 12 hours, because they believe such authorizations should be used only in the case of an emergency, and emergencies generally do not last for that length of time.

Response: We believe that allowing an authorization for the emergency use of a physical restraint to be in effect for up to 12 hours is appropriate. A 12-hour authorization does not mandate that a client must be placed in a physical restraint for 12 hours. It means that a client's situation is so unstable that the facility has determined that the continued or intermittent use of a physical restraint might be needed, and that official authorization for usage can occur for a 12-hour period. We also do not agree with the commenter's who preferred more frequent releases of restraints (for example, release for 10 minutes every hour rather than every two hours as was proposed). We note that the ACDD in their past and recently released new standards require release for ten minutes every two hours. We do not believe that it is appropriate to require a more stringent standard than that developed by experts. Also, to ensure the appropriate use of restraints, the final rule at § 483.450(d)(4) requires that a client must be released from a restraint as quickly as possible, and must be checked every 30 minutes while the restraint is applied.

Comment: Five commenters objected to the proposed rule at § 442.456(e) because they believe that clients placed in restraints shold be checked more often than every 30 minutes. They expressed concern that a 30-minute interval between checks was too long and that it may be traumatizing for some clients to be left alone for that length of time. Commenters' suggestions ranged from requiring checks every 15 minutes, to requiring "continuous" observation by staff.

Response: We do not agree that the interval should be shortened. The proposed rule stated and this final rule states that a client must be checked at least every 30 minutes by staff. We believe that to ensure a client's physical safety, it is sufficient to check a client at least once every 30 minutes. However, we recognize that in some cases a client's psychological and physical well being might be enhanced by more frequent checks, and for some of these clients continuous visual supervision might be appropriate. It is also true that for some manipulative clients, constant visual supervision or very frequent checks would serve to reinforce inappropriate behavior and thereby reduce the clinical effectiveness of using the restraint. Therefore, constant or very frequent monitoring may be helpful for some clients and contraindicated for others. Our purpose is not to address every particular case, but to stipulate that, as a minimum requirement, all clients in restraints must be checked at least every 30 minutes. In the final rule, this requirement is found at § 483.450(d)(4).

Comment: Four commenters requested us to modify the proposed rule at § 442.456(h) that would require that the opportunity for motion and exercise must be provided for a period of not less than 10 minutes during every two hours that a restraint is applied. Commenters suggested that if a restraint was worn by a client all night long, it would be unreasonable to wake the client to take the restraint off for 10 minutes every two hours. They suggested that we add to the regulations that the opportunity for 10 minutes of motion every two hours must be provided only when a client is wearing the restraint and awake.

Response: We do not agree. First, the burden of proof would fall on the facility to be able to justify why the continued usage of restraint is necessary during sleeping hours, as on the surface, it would seem that most clients, while asleep, would not do damage to self or others. However, some clients may awaken during the night and engage in assaultive or aggressive behavior. If restraints are used to replace staff shortages or in place of an active treatment program aimed at eliminating this behavior, then the rule forbids the practice. For those very small numbers of clients, whose behavior might warrant the use of a restraint during the night, the provisions pertaining to motion and exercise apply. Opportunity for motion and exercise for those clients, who wear physical restraints that limit their free movement, is necessary to maintain blood circulation and to ensure that clients do not become stiff or lose any range of motion. Thus, we have kept the proposed requirement, since a restraint can cause loss of range of motion to occur whether the person is awake or asleep. However, if a restraint is worn to deprive a client of access to a portion or portions of his or her body, and does not restrict range of motion, then exercise of the "restrained" area would not be needed.

Comment: A few commenters objected to the proposed rule at § 442.456(i) because it would allow a client to be placed in a totally enclosed device. Commenters suggested that if we allowed this practice, it would appear that we condone "putting a person in a cage", which would be demeaning and dehumanizing for the client, and potentially pose a fire hazard.

Response: We agree that the practice of putting an individual in a barred or totally enclosed device is very restrictive, and presents special fire safety problems. Therefore, we have deleted the provision proposed at § 442.456(i) regarding totally enclosed cribs. Also, it should be noted, that we have retained in the final regulations at § 483.450(d)(7) the provisions proposed at § 442.456(j) which prohibit the use of barred enclosures that have tops.

Comment: Twenty-seven commenters objected to the proposed regulations at § 442.452(d) because they would allow staff to place a client unobserved in a room or other area from which egress is prevented as part of systematic time-out program that meets all applicable standards. Commenters expressed concern that the proposed rule would allow facilities to use "seclusion" inappropriately, since it does not identify the "applicable standards" that must be met for the practice to constitute a proper use of time out. The commenters recommended that the regulations clarify that for "seclusion" to constitute a proper use of time out, it must be a procedure in which the client, due to inappropriate behavior, is removed from a situation that positively reinforces that behavior, in order to decrease the frequency of the behavior. Commenters also suggested that we use the language of the corresponding ACDD standard pertaining to the use of time-out rooms, to distinguish the use of "time out", from the practice of "seclusion".

Response: Our intent was to adopt the criteria used by the ACDD in addressing the issues pertaining to the use of time-out and seclusion since its criteria are widely accepted as reasonable standards. However, the comments indicate that we need to use clearer language in our attempt to adopt the criteria used by the ACDD to distinguish "seclusion" from "time-out". Therefore, in this final rule at § 483.450(c), we have consolidated in one standard all the requirements that must be met for a time-out activity to qualify as an acceptable procedure, and have used revised language to clarify our meaning.

Comment: Commenters were evenly divided in their opinions regarding whether or not the requirements pertaining to the use of time out, which were proposed at §§ 442.452(d), 442.454(b), and 442.454(e) (1) and (2), should apply to all time-out procedures, or only to those which use "devices" as part of the time out.

Response: The intent of the proposed rule was to prohibit seclusion, and to regulate the use of devices that are employed as part of a time-out procedure. As discussed, due to the volume of comments, we have reorganized the proposed rule and have included in this final rule a separate standard at § 483.450(c) that specifies the requirements that must be met in using time-out rooms. In addition to rooms, physical restraints are also devices that can be used for the purpose of providing time out. Physical restraints, including those that are used for purposes of time out, must meet the pertinent requirements in the standard concerning physical restraints located at § 483.450(d) of this final rule.

Comment: Opinions were expressed that were evenly divided concerning whether or not locks should be allowed on time-out rooms. Fifteen favored the use of locks, and fourteen were opposed. In addition, twenty-seven commenters stated that they could not support the proposal on the use of time-out rooms unless it included basic safeguards regarding the supervision and observation of clients, time limitations, training of staff, and room safety.

Response: We agree with the last group of commenters. Therefore, this final rule specifies the following: (1) A client may be placed in a time-out room only if placement is part of an approved program aimed at eliminating the behavior for which time out is employed; (2) emergency placement in a time-out room must not occur; (3) the client in a time-out room must be under the direct, constant, visual supervision of staff; (4) the door to the room must require constant physical pressure by staff to remain closed; (5) placement must not exceed one hour; and (6) clients must be protected from hazardous conditions while placed in time-out rooms. The final rule also includes other requirements (such as, the need for informed consent, outside committee approval, trained staff, and documentation on the effectiveness of previously tried techniques) that apply to the use of time-out rooms, as well as to the use of any restrictive technique.

Comment: Several commenters objected to the proposed rule at § 442.454(d) that would allow a professional staff member, under extraordinary circumstances, to approve placing a client in a time-out room for longer than one hour. Commenters expressed concern because they believe the term "extraordinary circumstances" is too vague to be used as a standard to regulate technique that is so intrusive to personal liberties. Also, they believe that being placed in a time-out room for longer than an hour would do no more for the client than serve as a punishment.

Response: One hour can be a very long period of time for a client to be kept in a time-out room and to be removed from positive reinforcement. We have found that most clients leave time-out rooms within a very short period of time after being placed there (usually within five to fifteen minutes) although some remain for much longer periods of time, usually on average around 45 to 60 minutes. Allowing time intervals beyond an hour, we agree invites potential for abuse. Therefore, in this final rule, we have deleted the provision that would have allowed a professional staff member to approve, in extraordinary instances, the use of time out for longer than an hour.

Comment: Some commenters objected to the requirement proposed at § 422.458(b) that drugs used for behavior management must be used only as an integral part of the client's IPP which is directed toward the reduction of, and eventual elimination of, the behaviors for which the drugs are employed. Commenters stated that this requirement is too idealistic because there are some individuals whose inappropriate behavior will never be totally eliminated and who will always need the support of drugs at a maintenance level. They suggested that the rule include separate requirements for those clients who are prescribed drugs for psychiatric disorders.

Response: We disagree. Our concern is that there must be an aggressive program to reduce and eliminate the behaviors for which the drugs are employed, regardless of the source or the nature of the diagnosis that is the basis for prescribing psychoactive medications. Thus, the facility must examine all the factors that might relate to the client's need for drugs. This includes the client's behavior, the staff's conduct toward the client, the family, the environment, and other factors that might influence the client's need for drugs, as well as the diagnosis and the medication regimen. Based on an evaluation of these factors, an active treatment program aimed at the acquisition of appropriate behavior by the client, and the eventual elimination of the need for drugs must be pursued within the context of a team process that draws on the expertise of all of its

members, including that of the physician.

Comment: Several commenters objected to our proposed standard at § 442.458 on drug usage, because in their opinion it did not adequately address issues pertaining to the need to obtain informed consent from the client regarding the use of drugs. Also, they believed that the standard did not adequately deal with issues pertaining to the prescription, monitoring, and review of psychotropic medications. Commenters stated that the misuse, and the inadequate monitoring and evaluation of psychotropic medications in mental retardation facilities has been well known and documented for years. They referred to a report from the American Psychiatric Association (APA) that medication to control inappropriate behavior may be prescribed for as many as 55 percent of those with developmental disabilities, despite research evidence that seriously questions the effectiveness of these drugs in treating behavioral disorders. They stated that the APA report indicates that physicians usually do not adequately evaluate the effectiveness of the medications, prescribe them for too long a period of time, and do not monitor their side effects or interactions with other medications.

Response: The purpose for this proposed standard was to prohibit the uninformed, misguided use of chemical agents to suppress and manipulate client behavior. Although guidance and information are available from psychopharmacologists, psychologists, and other professionals, on how to use medications in a facilitative rather than in an oppressive way, facilities have been slow to consult with these individuals in determining how best to utilize drugs for their clients. Therefore, to strengthen this standard in the final rule, we have included several additional provisions to safeguard clients and control the use of drugs in ICFs/MR.

The standard for drug usage in the final rule, at § 483.450(e) requires the following: (1) That drugs used in the control of inappropriate behavior must be approved by the interdisciplinary team; (2) that drugs prescribed to control inappropriate behavior must be monitored closely for desired responses and adverse consequences by facility staff; (3) that these drugs be gradually withdrawn at least annually, unless documented clinical evidence indicates that this is contraindicated because of the client's condition. Additionally, the final rule requires that, before approving the use of a drug, the interdisciplinary team must document that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drug. Also, in accordance with the final rule at § 483.440(f)(3)(ii), informed consent regarding the use of drugs is required from the client, parents (if the client is a minor), or legal guardian.

Comment: The proposed drug standard would require that a facility must not use drugs as punishment, for staff convenience, as a substitute for active treatment, or in doses that interfere with a client's IPP. Twelve commenters asked if these regulations would apply to all drugs, or only drugs prescribed to modify client behavior. These commenters suggested that they should apply only to drugs prescribed for a client's inappropriate behavior.

Response: We do not agree that these provisions should apply only to drugs prescribed to modify behavior. Historically, many types of medications used in the care of mentally retarded individuals, including laxatives and anti-convulsants, have been used inappropriately. Therefore, these requirements apply to all medications.

Comment: The proposed rule at § 442.456(k) would require that a physical restraint used as a time-out device must be used only during behavior modification exercises. Two commenters requested that we define what we mean by "behavior modification exercises".

Response: The intent of the proposed regulation was to ensure that a restraint used as a time-out device (like any other time-out device) would be used as part of a formal training or behavior shaping program and to prohibit the emergency use of time-out devices.

To clarify what we meant by "behavior modification exercises", the final rule at § 483.450(d)(1) states that a facility may employ physical restraints only as an integral part of an IPP.

Comment: Seven commenters requested clarification of the proposed requirement at § 442.454(e)(2) that restrictive programs to manage inappropriate client behavior cannot be implemented until written consent of the client or his or her parents or legal guardian, if available, has been obtained. Commenters expressed concern about obtaining informed written consent from minor clients, who do not have parents, or adults who are clearly incompetent, but do not have a legal guardian assigned because they have not yet completed formal adjudication procedures. These commenters suggested that for these clients, the outside committee required by the proposed rule at § 442.450(e), or the State's protection and advocacy agency should be responsible for providing consent to the use of restrictive procedures.

Response: It was our intent to require consent, if available, for the use of aversive techniques from either the client, or his or her "parents" (if the client is a minor), or a "legal guardian". Ordinarily, it is one of these three persons who can act in a client's behalf unless someone else had been designated to do so by the State. Thus, by listing these three persons, we did not intend to limit the State's authority to designate someone else to represent the client. Also, we are aware that in some instances a client's legal status may not yet have been adjudicated, even though the client is not able to give informed consent. That is why the proposed rule stipulated that consent was required, "if available". Nevertheless, we believe that the use of the phrase, "if available", has only confused the meaning of this requirement. Therefore, it has been deleted. For those clients who are minors, or who are clearly incompetent but have no appointed legal guardian, interpretive guidelines will explain that written consent for these clients should be obtained from someone designated by the State to represent the client. However, in many cases, a facility would serve as an advocate for these clients by trying to facilitate the timely adjudication of their legal status.

Comment: Several commenters submitted additional opinions on the proposed requirement, at § 442.454(e)(2), that would prohibit restrictive programs from being implemented until consent was given. Some objected to requiring that consent be obtained only if it is available. They felt that this requirement was so vague that it would allow a facility to implement an intrusive program without making a sufficient effort to obtain consent. For example, if a guardian was not "available" to give consent by phone, a facility might not make any additional efforts to obtain consent. Also, a few commenters felt that a legally competent adult would never consent to receiving aversive conditioning. Others believed that it was unreasonable for us to require for incompetent clients, who do not have a legal guardian because their status had not been adjudicated, that legal guardianship must be established in order to obtain required consent. One commenter requested us to state explicitly in the final rule, that failure by a client to give consent to a restrictive program, would not be grounds for discharge from the facility.

Response: As discussed in the previous response, we have deleted from the rule the phrase, "as available", because of the confusion it had caused. Also, the final rule does not require that legal guardianship be established for an adult client, or a minor child without parents, who is unable to give informed consent, but whose legal status has not yet been adjudicated. In those cases, we believe it is sufficient for someone designated by the State as the client's representative, to approve the use of intrusive treatment until the client's status has been adjudicated and a guardian appointed. Also, we know that clients are not only able to, but do in fact, give informed consent for intrusive programs to be conducted. However, we believe that the more salient issue is whether or not refusal to give consent for a restrictive procedure would be automatic grounds for discharge from the facility. When a client refuses to give consent to an aversive procedure, the facility must first review its documentation to ensure that all techniques that are more positive or less intrusive have been tried and demonstrated to be ineffective. If all less intrusive techniques have been proven to be ineffective, then the facility must decide how, if at all, it can continue to meet the active treatment needs of the client. If a facility believes that it cannot meet the active treatment needs of the client, unless it provides the intrusive technique for which consent has been refused, this could constitute grounds for discharge. However, should the client want to contest the discharge, he or she has the right to pursue legal redress.

Comment: One commenter suggested that the proposed rule at § 442.454(e)(2), which would allow restrictive programs to be conducted only with written consent, be amended to require "informed" written consent.

Response: It was our intent to require informed consent. However, to ensure that this is clearly understood, the final rule at § 483.440(f)(3)(ii) specifically states that informed written consent is required.

Comment: Four commenters suggested that we mandate that physicians and behavior management specialists must participate on the interdisciplinary teams of those clients who need programs to change inappropriate behavior. Commenters stated that this is necessary, because the development of effective programs to manage inappropriate client behavior, which may necessitate addressing such problems as drug usage and determining whether organicity is the cause of the client's behavior, should only be done by qualified and experienced personnel.

Response: We appreciate the intent of the commenters. We believe the proposed requirement at § 442.444(a) would ensure adequately that those professionals who are needed to develop effective programs, would participate on each client's team. However, to further clarify our intent, the language of the final rule at § 483.440(c)(1) requires that a client's interdisciplinary team must represent those professions and disciplines relevant to each client's needs as identified in the client's comprehensive assessment, and to the design of programs to meet the client's needs. Moreover, we do not agree that it is necessary for those professionals named by the commenters to participate on the team of every client who needs a program to manage inappropriate behavior. Whether or not these professionals are needed will depend on the particular behavior management needs of the client. Also, participation on the team may vary at times contingent upon whether the task the team is completing pertains to the design, implementation or review of the client's IPP.

Comment: Five commenters were concerned that we did not require staff who implement restrictive programs to be trained. A few of these commenters specifically stressed the importance of requiring training for staff who implement restraint programs.

Response: It was our belief that this issue was addressed by the proposed provisions at § 442.430(c), which would mandate that staff must be able to demonstrate the skills and techniques necessary to implement the IPPs for each client under their care, and the proposed provisions at § 442.456(e) which would require that staff applying restraints must be trained in their use. However, we have concluded that it was necessary to add a provision in the final rule at § 483.430(e)(3) to require staff training on all techniques to manage inappropriate behavior, as well.

Comment: Two commenters recommended that the regulation require that baseline data be kept on all programs which are for the purpose of managing inappropriate client behavior, so that the pattern and frequency of such behavior can be assessed.

Response: We agree that such data should be kept. The facility is required by the final regulations at § 483.450(b)(1)(iii) to demonstrate the ineffectiveness of all previously tried behavior shaping techniques prior to the use of more restrictive techniques. Therefore, it is already implicitly required that baseline data must be maintained. The facility would not be able to evaluate, without baseline data, the effectiveness of previously tried programs and techniques to manage inappropriate behavior. Furthermore, § 483.440(e) of the final rule requires that data pertaining to the accomplishment of criteria specified in IPP objectives must be documented in measurable terms.

Comment: One commenter requested that we specify how often programs designed to manage inappropriate client behavior must be reviewed for effectiveness. This commenter believes that since we have deleted the existing requirement that client IPPs be reviewed monthly, we no longer have a mechanism to ensure that restrictive and intrusive programs will be reviewed and revised as often as needed.

Response: We appreciate the commenters' concern, but believe it would be to prescriptive to specify how often these programs must be reviewed. In accordance with the final rule, a client's IPP (including any IPP objective targeted to eliminate maladaptive behavior) must be revised as needed. We believe that the facility should develop its own process for ensuring that this is accomplished effectively.

Comment: Two commenters suggested that we should not require facilities to describe in a client's IPP all the methods that are used to manage inappropriate client behavior, such as the application of "house rules" or "standard contingencies" that apply to all clients in a residence.

Response: We do not agree. In applying "house rules" or "standard contingencies," which pertain to *all* clients in a residence, the facility must still take into account the individual needs of each client, and ensure that if any contingencies result in the abrogation of client rights or protections, that this does not amount to neglect or abuse. All the objectives for which the client is being trained must be included in the IPP. If it is in a client's best interest to participate in a program, in which contingencies are applied based on the client's behavior, then there should be a corresponding behavioral objective in the client's IPP, so that the effects of the program on the client, and the use of the contingencies, can be evaluated by the team.

Comment: One commenter recommended that the proposed requirement at § 442.444(d)(6), that an IPP must include the written strategies which are to be used to reach the objectives, should be waived for those

objectives that are designed to eliminate maladaptive behaviors. The commenter stated that these written strategies are usually very long (two to six pages). Therefore, if they are included as part of the IPP, they would make the document too bulky.

Response: As discussed earlier in this preamble, the proposed rule has been revised and the final regulations at § 483.440(c)(6)(ii) no longer require that the IPP include the strategies to be used, but only that it identify the location where program strategy information can be found.

Comment: A few commenters recommended that we require each facility to have a "behavior management" review committee in addition to the specially constituted committee required by the proposed rule at § 442.450(e). These commenters felt that the rule should require each facility to establish a separate committee consisting of members with expertise in behavior management in order to ensure that proposed restrictive and aversive programs were technically appropriate, and that a client's rights were not abridged.

Response: We appreciate the concern of the commenters, but we believe that it would be too prescriptive to require the establishment of another committee in addition to the one required by the final rule at § 483.440(f)(3). However, as mentioned before, we have included in the final rule at § 483.440(f)(3) that a qualified person or persons who have either experience or training in contemporary practices to change inappropriate client behavior must be on the outside committee.

Comment: One commenter expressed confusion about the meaning of the term "punishment", as used in the proposed rule at § 442.458(a) that would prohibit the use of drugs as a punishment. The commenter could not determine if our intent was to use it in a generic sense, to mean "discipline", or to use it as it is clinically defined.

Response: The word "punishment", as used for example, in the proposed rule concerning physical restraints and drug use at §§ 442.456(g) and 442.458(a), respectively, means the application of very intrusive measures (such as physical restraints) in order to "discipline" a client. To clarify our intent, we have referred to "disciplinary purposes" in the final rule at § 483.450(b)(3), instead of punishment.

Comment: A few commenters felt that the proposed requirement at § 442.452(c), which would prohibit staff from using corporal punishment, or verbal, physical, or sexual abuse, would have been given greater importance if it was relocated to the standard concerning staff treatment of clients at §442.424.

Response: We agree. We have made revisions so that the standard for staff treatment of clients in the final rule at §483.420(d) now includes the provisions on the mistreatment of clients that were originally proposed at § 442.452(c).

Comment: One commenter recommended that we require facilities to have special procedures to review their behavior management programs that result in contingencies that may abridge clients' rights or protections.

Response: We do not agree that this is necessary. The outside committee, which is required by the final rule at 483.440(f)(3), already has the responsibility of ensuring that client rights are protected.

Y. Professional Program Services (Proposed § 442.460; Final § 483.430(b))

Comment: Several commenters criticized the proposed requirements at § 442.460 (e)(1) through (e)(9), regarding professional qualifications. These commenters stated that our emphasis on "credentials", such as requirements pertaining to academic degrees, work experience, or membership in professional associations, did not guarantee provision of quality services, and was extremely prescriptive and inconsistent with our stated intent to develop outcome-oriented standards. They suggested instead that work performance should be stressed. They also stated that if employment credentials were required for certain positions, that they should be the same as those specified in State licensure and certification standards. Others recommended that State licensure requirements should be waived for those unlicensed professional and paraprofessional staff who work under the direct supervision of licensed professional personnel.

Response: One of the most important requirements in the ICF/MR regulation is that each client's active treatment program must be developed and implemented by qualified staff. However, we agree that requiring staff, who meet State licensure requirements, to meet additional qualifications, is too "process" oriented. Therefore, we have amended the proposed rule so that only staff who do not fall under the jurisdiction of State licensure or certification requirements must meet the professional qualifications listed in the final regulation at § 483.430(b). Moreover, if there is no conflict with State licensure and certification requirements, we will now allow facilities to utilize professionals who do not meet the qualifications specified in the final rule at § 483.430(b)(5)(i) through (5)(x), if it can be demonstrated that clients' IPPs are being successfully implemented. Regardless, there must be a foundation of knowledge that can be drawn upon in the facility, and we believe that setting qualifications for professionals helps to ensure (but does not guarantee) that needed knowledge is available. Also, we have consolidated into a single requirement, at § 483.430(b) of the final rule, the various references in the proposed rule to the standard that professional staff must be licensed, certified, or registered if required by State law. It is important to note that the final regulations do not specify qualifications for positions, but rather set qualifications for those who are referred to as "professional" staff.

Comment: A few commenters stated that the educational qualifications required by the proposed rule at § 442.460(e)(6) would decrease the number of social workers eligible to provide professional services in ICFs/MR. Commenters suggested that we either retain the requirements of the current rule, or include a "grandfather" clause to allow those who meet the existing requirements to continue in their present positions.

Response: We disagree. Under the final rule, for a person to be designated as a "social worker", the person must meet the qualification requirements at § 483.430(b)(5)(vi), or be licensed or certified as a social worker by the State. However, while a person who is not qualified as a social worker may not be referred to as a social worker per se; nevertheless, such a person may be able to provide social services in an ICF/MR if there is no conflict with State law and as long as the clients' needs are being met. The final rule at § 483.430(b)(5)(xi) allows facilities to utilize staff to provide professional services who do not meet the qualifications specified at § 483.430(b) (5)(i) through (5)(x), if it can be demonstrated that clients' IPPs are being successfully implemented. Furthermore, the proposed rule does not raise the standards that must be met by those who function as qualified mental retardation professionals. In accordance with the existing regulations, those individuals who have a bachelor's degree in a human services field, and who have three years of experience working under the supervision of a social worker, can function as qualified mental retardation professionals. Under the new rule, these persons can still function as qualified mental retardation professionals, because the final rule at § 483.430(a) does not require qualified

mental retardation professionals to meet one of the standards at § 483.430(b) (5)(i) through (x), which apply to specific categories of professional program staff, since staff who meet the requirements at paragraph (5)(x) of the section may also qualify as qualified mental retardation professionals.

Comment: A few commenters criticized the proposed required qualifications for professional program staff, at § 442.460(e), as being too lax. Commenters stated that, generally, graduates from most professional educational programs have no training or experience in working with persons with mental retardation or developmental disabilities. Therefore, they suggested that all professional program staff should be required to have the equivalent of one year of either completing coursework pertaining to mental retardation or other developmental disabilities, or working directly with the ICF/MR population.

Response: We disagree. We believe the commenters' suggestion pertaining to required coursework and work experience is too prescriptive, and would interfere with a facility's ability to recruit qualified professional staff. We agree that many professional training programs do not include distinct coursework on the nature of mental retardation or developmental disabilities, and many graduates from these programs have no experience working with this population. However, we believe that most professional educational programs in the field of human services, provide training that can be adapted by graduates to enable them to work effectively, as professionals, in ICFs/MR. Therefore, since the commenters' suggested change would not allow facilities to hire these individuals for professional positions, we have not included it in the final rule. Nevertheless, we believe that a facility should recruit and hire the most experienced and knowledgeable professional staff that it can. Also, in connection with this comment, under the final regulation at § 483.430, a facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

Comment: A few commenters criticized the proposed qualifications at § 442.460(e) because, in some instances, a professional was required only to "be eligible for" certification, rather than be certified or registered by the applicable professional association. These commenters stated that this standard was too lenient, and that the regulation should require that these professionals be certified within a specified period of time.

Response: For the regulations to require that staff must be certified with a particular professional association, rather than to require them to be eligible for certification, would mean that HCFA was mandating that certain ICF/MR staff must be members of or affiliated with specific professional associations. We do not believe that it would be appropriate for HCFA to include such a requirement in the regulation.

Comment: Some commenters found the proposed requirements at § 442.450 that specify the experience qualifications of a qualified mental retardation professional and at § 442.460 that state the academic requirements for a qualified mental retardation professional, to be duplicative and unclear. A few commenters suggested that we identify the titles of those professional positions which may qualify a person to be a qualified mental retardation professional, and specify the required credentials for these positions. Other commenters suggested that all provisions relating to the qualifications of qualified mental retardation professionals, located in the proposed § 442.450, should be relocated to § 442.460.

Response: We do not agree that the changes suggested would improve the readability or clarity of the regulations. We believe that the rule, without the suggested changes, clearly identifies the professional requirements that must be met for a person to qualify as a qualified mental retardation professional. These requirements are contained in the final regulations at § 483.430(a).

Comment: A few commenters questioned the need of establishing required job qualifications for some paraprofessional positions (that is, occupational therapy assistants and physical therapy assistants), while not including required qualifications for others, such as teacher assistants and recreation assistants. These commenters suggested that to be consistent, we should either establish required qualifications for all paraprofessional positions, or for none of them.

Response: Qualifications were included in the proposed regulations for occupational and physical therapy assistants because national standards exist for these two positions that have been established by their national associations. We have not included teacher assistant standards because we do not believe that there are national employment standards established for the position of teacher assistant, or for any other paraprofessional position that is frequently employed in ICFs/MR. It should be noted, however, that if these "assistants" have less than a bachelor's degree, they cannot serve as qualified mental retardation professionals.

Comment: A few commenters, including the applicable national professional association, criticized the proposed professional standards for occupational therapists at § 442.460(e)(1), and occupational therapy assistants at § 442.460(e)(2) that would require that individuals in these positions be eligible for certification by their national association, or a graduate of a program accredited by that association. The commenters asserted that these two requirements are redundant, since a graduate of a program accredited by the American Occupational Therapy Association, would also be eligible for certification by that association. Therefore, the commenters suggested that we delete the proposed provisions requiring graduation from an accredited program.

Response: We agree. The proposed provisions requiring graduation from an accredited program have not been included in this final rule.

Comment: The proposed professional qualifications at § 442.460(e)(5), that would require that a person must have at least a master's degree in psychology in order to be designated as a psychologist, elicited widely varying comments. Suggestions for changes included various combinations of requirements regarding the type of degree, the credentials of the person who supervises the psychologist, and the number of years of experience necessary to be "qualified." For example, one commenter stated that a person with a bachelor's degree in psychology should be allowed to practice as a psychologist if his work is supervised by a psychologist with a master's or doctoral degree. Another commenter suggested that to be consistent with other Federal programs (such as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Social Security Disability Insurance (SSDI), and the Federal Employee Health Benefits Program) only Ph.D. level psychologists should be considered qualified to provide psychological services to clients of ICFs/MR.

Response: Licensure or certification requirements in most States require psychologists to have at least a master's degree in order to provide professional services. Requiring psychologists to have at least a master's degree to qualify to provide psychological services is a widely accepted standard. Thus, in

those States where there are no applicable State licensure requirements, we believe it is appropriate to require a master's degree as a minimum qualification for a person to be designated as a psychologist.

Comment: One commenter pointed out that the proposed regulation at § 442.460(e)(5), which would require a psychologist to have a master's degree from an accredited program, is not an appropriate requirement because the American Psychological Association accredits only doctoral level programs. The commenter suggested that we delete the word "program" and substitute the word "school".

Response: We agree. In the final rule, at § 483.430(b)(5)(v) we now use the word "school" rather than the word "program".

Comment: One commenter criticized the proposed rule at § 442.460(e)(6)(iii) because it would allow a person with a bachelor's degree in social work to practice as a professional social worker. The commenter believes a master's degree should be required.

Response: We disagree. Technically, a person with a bachelor's degree might not be as qualified to provide social services, as a person with a master's degree. However, the Council on Social Work Education accredits professional training programs at the bachelor's degree level. Therefore, we do not believe it is necessary to stipulate standards in excess of that.

Comment: Several commenters recommended that we amend the proposed rule at § 442.460(e)(7)(i) requiring that speech and language pathologists or audiologists must be eligible for certification by the American Speech, Language, and Hearing Association (ASHA), in accordance with the requirements that the Association has in effect at the time of this rule's publication. Commenters stated that by using the proposed language, the regulation would be out-of-date as soon as ASHA's requirements changed. They suggested that this would be avoided if the rule referred to ASHA's "current requirements", instead.

Response: We agree with the commenters' recommendation and have deleted the reference to the time of publication of the regulation (see § 483.430(b)(5)(vii) of the final rule). We have not, however, made a specific reference to "current requirements". HCFA keeps abreast of changes that are made to the professional standards of organizations and will amend this regulation as appropriate.

Comment: Several commenters objected to the proposed language at § 442.460(e)(8) that would allow an individual to qualify as a professional recreation staff member by having a degree either in recreation or in a specialty area such as art, dance, music, physical education, or recreation therapy. Commenters stated that an individual with a degree in recreation receives much less training and experience in working with the disabled population than individuals who have a degree in one of the creative art specialty areas named in the proposed rule. Therefore, because of the distinct differences in the training and experience they receive, the commenters recommended that the qualification standards for professional recreation staff members should be completely separate from those that apply to individuals training in one of the creative art specialty areas. Some commenters also objected to the proposed language at § 442.460(e)(8) because it would allow a person with a fine arts degree in music, art, or dance to qualify as a professional staff member in an ICF/MR, even though the individual may not have had training in how to work with special populations. Therefore, they suggested that the regulation specifically require that individuals trained in music, art, or dance must have degrees in music therapy, art therapy, or dance therapy, to qualify as professional staff members.

Response: We have retained the proposed language in these final regulations. We believe that the thrust of the comments is that, within the universe of individuals appropriate to serve as recreation staff, distinctions can be drawn based on education and training. None of the commenters suggested that the universe of individuals covered under the language of the proposal would not be suitable as recreation staff. Since our objective in these regulations is to provide flexibility to the extent feasible, we see no useful purpose in drawing additional distinctions within the universe. We expect that ICFs/MR will employ those individuals necessary to achieve the desired outcomes.

Comment: Some commenters criticized the proposed rule at § 442.460(e)(8) because it would require professional recreation staff members to have a bachelor's degree. These commenters stated that this was too strict a requirement and would decrease the number of people who could qualify for this position. They suggested that we either retain the qualification requirements for recreation staff members contained in existing regulations, or that we include a "grandfather" provision to allow those who occupy this position currently, to continue to do so under final regulations.

Response: Under current regulations at section § 442.493(b), a person with sufficient experience and proficiency may qualify to conduct the recreation program for an ICF/MR, even though the person does not have a bachelor's degree in recreation. Under this final rule, these persons may still qualify to perform this function, because the rule at § 483.430(b)(5)(xi) does not require that a person has to be designated as a professional recreation staff member to provide these services to clients. Nevertheless, if they are not licensed or certified in their State, these persons would not be able to call themselves "professional recreastion staff" members unless they have a bachelor's degree in recreation. However, we do not believe that "grandfathering" is necessary, because the new rule, and the existing rule, allow individuals who have sufficient experience and proficiency to conduct recreation programs for ICFs/MR.

Comment: Several commenters expressed concern that since the professional qualifications for dietitians were included in the proposed standard for facility staffing, at § 442.426(f) instead of in the proposed standard for professional program services, at § 442.460, dietitians would not qualify as qualified mental retardation professionals. This would happen because the proposed rule at § 442.450(a)(3)(iii) would include individuals who hold a bachelor's degree in a professional category listed at § 442.460 among those who qualify to be qualified mental retardation professionals. Therefore, they suggested that we relocate the qualifications for dietitians to the standard on professional program services, at § 442.460.

Response: We agree and have transferred the provisions of the regulation regarding the required qualifications for professional dietitians to the standard for professional program services contained in final regulations at § 483.430(b)(5)(ix).

Comment: Twenty commenters criticized the proposed rule at § 442.460(e)(9) because it would not allow persons with a bachelor's degree in psychology to function as human services professionals. The proposed rule at § 442.460(e)(9) states that a human services professional must be a person with at least a bachelor's degree in a human services field, other than those mentioned in § 442.460(e)(1) through (e)(8) of this section. The proposed § 442.460(e)(5) specifically

mentioned psychology and would require that a psychologist have a master's degree. The commenters objected because they believe that a person with a bachelor's degree in psychology would be as qualified to be a human services professional as a person with a bachelor's degree in any of the disciplines mentioned at proposed § 442.460(e)(9), such as sociology, special education, rehabilitation counseling. Therefore, the commenters suggested that the rule be amended to allow individuals with a bachelor's degree in psychology to qualify as human services professionals, since psychology provides detailed training in principles directly related to active treatment and human behavior.

Response: We agree and have modified the proposed rule. The amendment is contained in the final rule at § 483.430(b)(5)(x). As discussed earlier in the preamble, the purpose for including in the regulation a human services professional category was to expand the number and types of persons who could qualify as qualified mental retardation professionals, while still maintaining acceptable professional standards. However, our intention also was to clarify that a person who qualifies as a "human services professional" does not necessarily meet the qualifications necessary to practice as a psychologist, social worker, etc. To further clarify our intent, we have revised the proposed rule to include the language suggested by one commenter. This revision is reflected in § 483.430(b)(5) of the final rule. Normally, for each specific professional discipline listed in § 483.430(b)(5)(i) through (5)(x), we have added the phrase, "To be designated as . . .". This phrase means that to function as a psychologist, social worker, etc., one must meet certain qualifications that are more specific than those that must be met to function as a "human services professional".

Comment: Some commenters criticized the propose rule for not specifying what qualifications must be met by professionals in the fields of special education and rehabilitation counseling. The commenters objected because they believe that a degree in these two fields of study requires more specialized training in mental retardation and developmental disabilities, than is required for a degree in the other disciplines for which the rule does list required professional qualifications. These commenters submitted suggested language to include in the final rule, as distinct and separate requirements, the qualification standards for these two disciplines.

Response: We disagree. The particular professions for which required qualifications were proposed at § 442.460, are the professions most commonly employed by ICFs/MR. Special education teachers and rehabilitation counselors are employed mostly by other types of programs such as special school districts which are not part of the ICF/MR, rather than by ICFs/MR. Also, it would not be practical to specify in the regulations, the required qualifications for every type of professional position found in an ICF/MR. However, to acknowledge the very specialized training in developmental disabilities that is required for a degeee in special education or rehabilitation counseling, we have specifically identified in the final rule at § 483.430(b)(5)(x) these disciplines as examples of academic degrees that could qualify a person as a human services professional.

Comment: Several commenters objected to the proposed rule at § 442.460(e)(9) because it mentions only sociology, special education, and rehabilitation counseling, as types of degrees that would qualify a person to be a human services professional. These commenters interpreted the proposed rule to mean that a person would have to have a degree in one of these three fields to qualify as a human services professional.

Response: Our intent, at proposed § 442.460(e)(9), was to give examples of acceptable human services degrees. To clarify that the three disciplines listed are intended only as examples and not as a complete list, we use in the final rule at § 483.430(b)(5)(x) the phrase "including, but not limited to".

Comment: A few commenters inquired whether or not, under the proposed rule, a professional staff member, who met the proposed requirements at § 442.460(e)(9), but did not meet State licensure requirements, could qualify as a human services professional.

Response: We do not believe that there are any applicable State licensure or certification requirements that must be met to be designated as a human services professional. Thus, in accordance with the final rule at § 483.430(b)(5)(x), anyone with a bachelors degree in a human services field can qualify as a human services professional. If that person has at least one year's experience working directly with mentally retarded or developmentally disabled individuals, then he or she could also qualify as a qualified mental retardation professional.

Comment: A few commenters criticized the human services professional category proposed at § 442.460(e)(9) because in their opinion the language was too vague and thus, subject to misinterpretation by providers and surveyors. They suggested that we define the term "human services field"; identify all the human service degrees that are acceptable; or, include in the meaning of human services, any discipline related to the type of services provided in ICFs/MR.

Response: We do not believe it would be practical to attempt to catalogue in regulations all the human service degrees that are acceptable. Also, in some instances, in taking into consideration a facility's needs and the type of training and coursework that a person has completed, it will be necessary for the facility and the surveyors to exercise judgment to determine what constitutes an acceptable human services degree.

The final rule also contains the provision at § 483.430(b)(5)(xi), which allows a facility, if it is able to implement clients' IPPs successfully, to use professional program staff, including human service professionals, who do not meet the qualifications stipulated in the regulation, as long as there is compliance with State licensure requirements.

We also have modified § 483.430(b)(5)(xi), which excuses providers from personnel qualification requirements under certain circumstances, to make it clear that it does not apply to the provision at § 483.430(b)(2) requiring enough staff to carry out the interventions necessary to achieve the objectives and goals of the IPP.

Comment: Additional commenters expressed various opinions about the proposed required qualifications at § 442.460(e)(9) for the human services professional category. Opinions ranged from statements that we were "too strict", to those that we were "too lax". For example, one commenter stated that the educational requirements should be deleted and replaced by some measurement of ability based on an examination. Another commenter stated that requiring a bachelor's degree in any field, plus three years of work experience in the field of developmental disabilities, would be more acceptable than the proposed standard. One commenter suggested that we delete the entire proposed category, because its inclusion in the rule decreased the level

of professionalism required of program staff in ICFs/MR.

Response: The proposed qualifications for the human services professional category generated a wide variety of comments. However, the majority of the commenters supported retaining this category in the regulation. Thus, we have decided to retain a separate human services professional category in the final rule at § 483.430(b)(5)(x), including the revisions to this category that were previously discussed in the preamble.

Comment: A few commenters stated that because of the proposed qualifications for professional personnel at § 442.460 (e)(1) through (e)(9), some professional staff members in ICFs/MR who are currently able to qualify as qualified mental retardation professionals will no longer be able to do so. Commenters suggested that we either retain the existing regulation as it applies to qualified mental retardation professionals, or that we establish a "grandfather" provision, which would allow any staff member currently functioning as a qualified mental retardation professional to continue in that position.

Response: We do not believe there are any substantive differences between the requirements contained in existing regulations and those in the proposed rule regarding the qualifications that must be met by a qualified mental retardation professional. Therefore, we are making no changes and believe that, generally, anyone who is qualified to function as a qualified mental retardation professional under the existing regulations also would be qualified under the regulations contained in this final rule.

Comment: Eleven commenters requested clarification about the proposed rule at § 442.460(c) which would require professional program staff to participate as team members in relevant aspects of the active treatment process. Commenters inquired whether "participation" could be obtained through written reports and recommendations, or whether the professionals would be required to be physically present at team meetings.

Response: The purpose of the interdisciplinary team process is to provide team members with the opportunity to review and discuss face-to-face, information and recommendations relating to the client's needs, and to reach decisions as a team rather than individually on how to best address those needs. Should a designated member of a particular client's team be unable or unwilling to participate in any meeting, the team should obtain the absent members' input through alternative means.

Comment: One commenter expressed concern that facilities would not be able to recognize when there is a need for special professional input regarding a particular client, and they would not be sufficiently knowledgeable about the services available from the various professional disciplines.

Response: We believe that for a facility to be able to perform adequately the comprehensive client assessments that are required by the regulations, its staff would have to be sufficiently knowledgeable about the services offered by the various professional disciplines. Generally, we believe that facilities that are able to assess client needs effectively also are able to assemble the expertise needed to develop and implement an effective program for their clients. We also believe that our outcome-oriented survey protocol identifies those facilities that are unable to perform effective assessments.

Comment: Five commenters were opposed to the proposed rule at § 442.460(a) that would require professionals to work directly with clients. They interpreted this section of the rule to mean that professional program staff must work directly with all clients on a daily basis. These commenters stated that this would be too costly and that the primary duty of professional personnel should be to direct the activity of paraprofessional and nonprofessional staff. Also, the commenters stated that many clients in ICFs/MR do not need direct professional contact, that often they only need programs that are developed and monitored by professionals, but which can be implemented by nonprofessional staff. They suggested that we revise the proposed rule so that it requires professional staff to work directly with clients only "as needed".

Response: We agree that there are clients residing in ICFs/MR who can often have their needs effectively met without having direct contact with professional program staff on a daily basis. The needs of these clients can often be met by competent nonprofessional staff who are supervised or directed by professionals. The intent of the rule is not to require that professionals work directly with clients on a daily basis, but only as often as a client's needs indicate that direct professional contact is necessary. The amount and degree of direct care that professionals must provide will depend on the needs of the clients and the ability of other staff to train and direct clients on a day-to-day basis. However, to have an effective program, professionals must evaluate clients, make recommendations, set planned outcomes, develop strategies, implement interventions, train staff, monitor the implementation of strategies, and review the effectiveness of programs.

Comment: One commenter stated that staff should not be allowed to provide services or implement interventions unless they are competent to do so, and suggested that this be included as a requirement.

Response: We agree. The proposed rule at § 442.430(c) would require that anyone providing services to a client should be able to demonstrate competency. This requirement has been kept in the final rule and is now contained in § 483.430(e).

Comment: One commenter requested that we specify the minimum professional staff-to-client ratios that must be met by a facility to ensure that its professional services are being adequately provided.

Response: We believe requiring specific professional staff to client ratios would be overly prescriptive. What constitutes an acceptable professional staff-to-client ratio in a particular facility is determined by the needs of its individual clients.

A facility must evaluate each of its clients, and then determine how many professional staff are necessary to provide the direct and indirect services required in order to meet their needs adequately.

Z. Physician Services (Proposed § 442.462, Final § 483.460)

Comment: Nine commenters objected to the proposed regulation at § 442.462(a) that would require facilities to provide or arrange for the provision of physician services 24 hours a day. They were concerned that the provision of physician services 24 hours a day could be interpreted to mean that the physician must be on the premises.

Response: We have accepted these comments and included revised language in the final regulations at § 483.460. Section 483.460 specifies that "the facility must ensure the availability of physician services 24 hours a day." This should make it clear that the physician does not need to be on the premises. The revised wording, however, does not negate the fact that facilities not having a physician directly employed must have a formal arrangement for physician services. With respect to these arrangements, the final rule at § 483.410(d)(2), concerning services provided through outside arrangements, requires that services not

provided directly must be provided under a written agreement.

In revising this regulation, it came to our attention that the proposed regulations contained some redundancy with regard to physician services. Both the proposed § 442.462 concerning physician services, and the proposed § 442.466 concerning comprehensive health services had statements requiring physician services 24 hours a day. To eliminate this repetition, as well as make other changes that will be explained in subsequent sections of the preamble, we have reorganized the material that was contained in the three proposed sections: § 442.462, "Physician services"; § 442.464, "Physician participation"; and, § 442.466, "Comprehensive health services". In the final rule, we have incorporated them into two sections: § 483.460(a), "Standard: Physician services", and § 483.460(b), "Standard: Physician participation in the individual program plan". The revised statement regarding 24 hours a day availability of physician services is contained in the final rule under standard § 483.460(a), Physician services.

AA. Physician Participation (Proposed § 442.464, Final § 483.460(b))

Comment: Nineteen commenters objected to the requirement that physicians develop a medical care plan on clients when they determine such a plan is necessary. The commenters felt that the regulations should include a more precise definition of when a medical care plan is required.

Response: We agree with these comments and have modified the language contained in proposed regulations to now state that a medical care plan is necessary when 24 hour licensed nursing care is needed. This revised language is located in the final rule at § 483.460(a), "Standard: Physician services".

BB. Comprehensive Health Services (Proposed § 442.466; Final § 483.460(a))

Comment: Eight commenters expressed an opinion on the components of the physical examination required under proposed § 442.466(b). These annual physicals require examinations of vision and hearing; routine immunizations and tuberculosis control; screening laboratory examinations as determined necessary by the physician, and special studies if needed. Some commenters preferred the words "evaluate" vision and hearing rather than "examination" of vision and hearing. Additionally, some commenters preferred the language as it appears in current regulations at § 442.477, over the language in the proposed rule. The current § 442.477 requires the physician to use the guidelines of the Public Health Service Advisory Committee on Immunization Practices and the American Academy of Pediatrics regarding immunizations and the American College of Chest Physicians or the American Academy of Pediatrics regarding tuberculosis control. It also requires the reporting of communicable diseases and infections in accordance with law.

Response: We have accepted these comments and have made revisions in the final regulations. We will use the term "evaluate" vision and hearing rather than "examination" of vision and hearing. We also have reinstated the language of current regulations § 442.477 that urges physicians to follow the guidelines of the Public Health Service and the American Academy of Pediatrics with regard to immunizations and the American College of Chest Physicians or the American Academy of Pediatrics regarding tuberculosis control. However, we have not incorporated into the final rule that part of the current regulations at § 442.477 that requires the reporting of communicable diseases. We believe this requirement is well established in State law, compliance with which is required by § 483.410(b) of these final regulations.

Also, in making the changes recommended by the commenters, we have incorporated into the condition concerning health care services under § 483.460 of the final rule, the material that was contained in the three proposed sections: § 442.462, "Physician services", § 442.464, "Physician participation" and § 442.466, "Comprehensive health services". Section 483.460(a) of the final rule contains the standard for physician services, and paragraph (b) contains the standard for physician participation in the IPP.

In the final rule, the standard for physician services at § 483.460(a) will retain the requirement for the availability of physician services 24 hours a day as well as the requirement that to the extent permitted by State law the facility may utilize physician assistants and nurse practitioners. The material regarding the development of a medical care plan previously under proposed § 442.464, has been moved to this section. Additionally, the requirement for general medical and preventive health services as well as annual physical examinations previously under the standard for comprehensive health services at the proposed § 442.466 has been moved to this section. Also, as mentioned in the response to the comments on section § 442.466, the components of the physical examination have been revised to include the same general requirement of current regulations § 442.477.

The new standard at § 483.460(b) concerning physician participation in the individual program plan will contain two of the requirements previously found under the proposed standard for physician participation at § 442.464. These are the requirements for physician participation in the establishment of each newly admitted clients' IPP as well as physician participation in the review and update of the IPP as appropriate.

CC. Nursing Services (Proposed § 442.468, Final § 483.460(c))

Comment: Thirty-one commenters objected to the proposed regulations at § 442.468(a) that would require nursing services to include the development, review, and update of an IPP as part of the interdisciplinary team process. They recommend that the regulations specify that nurses participate in the IPP process only when clients have nursing needs.

Response: We have accepted these comments. We have revised the regulations to read nursing services must include participation as appropriate in the development, review, and update of an IPP as part of the interdisciplinary team process.

Comment: Six commenters expressed views on the proposed regulations at § 442.468(c) that would require an onsite, direct physical review at least quarterly by licensed nurses for clients who do not have a medical care plan. Specific comments were: The direct physical review does not necessarily need to take place in the facility and therefore the word onsite should be removed; the term direct physical review should be defined; and finally a quarterly review may not be frequent enough for some clients.

Response: We have revised the regulations to omit the word onsite. The

purpose of the direct physical review is to identify any health problems that might need medical intervention or any potential health problems that could be prevented. We have, however, retained the word "direct" which means that the nurse must review the client directly and not through another staff member such as a member of the direct care staff or through a medical record review.

We have also revised the regulations to read "direct physical examination" rather than "direct physical review". We will explain in interpretive guidelines that this means a visual review of the body as well as any tactile examination that might be necessary. A paper review of the patient's medical record and health statistics is not a direct physical examination.

We agree with the commenters that a quarterly physical review of each client by licensed nurses may not be frequent enough for some clients. Although the proposed regulation reads "at least quarterly", we have emphasized the fact that this is a minimal requirement by rephrasing the regulations to read "on a quarterly or more frequent basis". This will mean that the facility will have to conduct quarterly reviews on all clients, but potentially more frequent reviews on clients who may require more frequent nurse surveillance.

In making the above revisions, we realized that the proposed §§ 442.468(c) and 442.470(d) contained duplicative requirements for health surveillance of clients on a quarterly basis. The only difference between the requirements is that the proposal at § 442.470(d) would require that licensed nursing personnel conduct the health surveillance. In this final rule, we have eliminated the duplication. The requirement for the quarterly health surveillance of clients by a licensed nurse appears in final regulations at § 483.460(c).

Comment: There were two comments on the proposed regulation that would require nurses to participate in training clients and staff as needed in appropriate health and hygiene methods. The commenters questioned whether or not the topics of health and hygiene included sex education.

Response: It is the intent of the proposed regulation that training in health and hygiene methods include the topic of sex education. This will be made clear in the interpretive guidelines.

DD. Nursing Staff (Proposed § 442.270, Final § 483.460(d))

Comment: Twenty commenters objected to the provision in § 442.470(c) requiring a facility to employ a licensed nurse on one full shift 7 days a week. Seventeen of the twenty felt that the requirement was too costly; one felt that job-sharing should be recognized as an appropriate means to accomplish the full-time equivalency; one suggested that contractual arrangements be recognized as an appropriate means of providing nursing services; one commenter felt the requirement should be changed to require a licensed nurse at least 16 hours a day, 7 days a week with a licensed nurse "on call" during the remaining 8 hours.

Response: We have accepted these comments except for the one requesting that facilities be required to provide 16 hours of licensed nursing time per day, 7 days a week. Since they had the same basic intent, we have combined the proposed requirements at § 442.470 (b) and (c) and incorporated them into the final rule at § 483.460(c) to state that the facility must employ or arrange for licensed nursing services sufficient to care for clients health needs including those clients with medical care plans. This gives each facility more freedom to determine what nursing services are required for its particular client population. Also, there is nothing in these final regulations which prohibit the use of job-sharing to meet the nursing personnel requirement.

Comment: The proposed § 442.460(d) would require facilities that use only licensed practical or vocational nurses to have a formal arrangement with a registered nurse for consultation. One commenter suggested that the consultation be a monthly activity with a flexible amount of time. Another commenter requested that the frequency of consultation and amount of time for consultative activities be specified. Finally, one commenter suggested that four hours of R.N. consultation per week be required in facilities with 16 or fewer beds.

Response: We disagree with the general thrust of these comments because we believe that the consultation needs of each facility cannot be specified in regulations. The nursing care needs of clients vary considerably from facility to facility. The amount of R.N. consultation time should be based on the needs of the clients. Thus, we have allowed facilities flexibility by not prescribing in regulations the number of R.N. consultation hours they must provide.

The proposed § 442.460(d) that would require a quarterly nurse surveillance of each client without a medical care plan was duplicative of the material in the proposed § 442.468(c). Therefore, it has been removed. (See the discussion under the response to comments regarding the proposed § 442.468(c), Nursing services.)

EE. Dental Services (Proposed § 442.472, Final § 483.460(e))

Comment: Twenty commenters objected to the proposed regulation that would require dental professionals to participate as appropriate in the development, review, and update of the IPP as part of the interdisciplinary process. The majority of the commenters requested clarification on how the dentist is expected to participate. Most of the commenters felt that the dentist should be able to submit a written report to the interdisciplinary team.

Response: We have accepted these comments. We agree that participation of the dentist can be through a written report. We therefore have modified the regulation to read: If appropriate, dental professionals must participate in the development, review, and update of an IPP as part of the interdisciplinary process either in person or through a written report to the interdisciplinary team.

Comment: One commenter requested that we retain current regulations found at § 442.459, "Education and training". These regulations require the facility to provide education and training in the maintenance of oral health.

Response: We have accepted the commenter's suggestion and have added a provision to final regulations § 483.460(e)(3) to require the facility to provide education and training in the maintenance of oral health.

FF. Comprehensive Dental Treatment (Proposed § 442.476, Final § 483.460(f))

Comment: Several commenters expressed views on the proposed requirement for comprehensive dental treatment services including dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health. In their view, reimbursement for comprehensive services is not available in every State and the regulations should not require services for which there is no reimbursement.

Response: Dental services are included in the ICF/MR benefit, even though a particular State may elect not to cover them separately for *non*-ICF/MR recipients. The law and regulations require that States make adequate payments (see § 447.253(b)(i)). The Medicaid statute (at section 1902(a)(13)(A)) states, in part, that payment rates for ICF/MR services must be "* * * reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with

applicable State and Federal laws, regulations, and quality and safety standards * * *". Thus, we would expect a State's ICF/MR payment rates reasonably to reflect the various items and services which constitute the ICF/MR benefit.

Comment: Four commenters expressed opinions on the proposed regulation that would require the provision of emergency dental treatment on a 24-hour-a-day basis by a licensed dentist. In their view, it is the availability of the services that is at issue, not the provision.

Response: We have accepted these comments and have amended the regulation to require that comprehensive dental treatment services include the availability of emergency dental treatment on a 24-hour-a-day basis by a licensed dentist.

GG. Documentation (Proposed § 442.478; Final § 483.460(h))

Comment: Three commenters expressed an opinion on the proposed standard that would require the facility to provide a copy of the dental record (if available) or the most recent dental summary to the client, his parents, or guardian upon discharge from the facility. In their view, the requirement is not necessary and increases program costs.

Response: We agree with the commenter and have deleted this requirement entirely. A general requirement found in these final regulations at § 483.410(c)(3) addresses the general issue of confidentiality of client records and requires the facility to develop policies and procedures for the release of client information.

HH. Pharmacy Services (Proposed § 442.480; Final § 483.460(i))

Comment: Thirteen commenters expressed approval of this standard because it would place the responsibility for the provision of drugs and biologicals on the facility whether the facility does so directly or through arrangement. One commenter objected to the requirement that would allow facilities to use "off site" pharmacies because they would not be able to meet the *immediate needs* of ICF/MR clients.

Response: Current regulations allow a facility to obtain pharmaceutical services from an outside resource, and we believe that these final regulations should continue that practice especially with the growth of small facilities with 16 or fewer beds that could not realistically operate their own pharmacies.

II. Drug Regimen Review (Proposed § 442.482; Final § 483.460(j))

Comment: A number of commenters objected to the proposed requirement that would involve the pharmacist, as appropriate, in the development of the IPP. Many did not feel that the participation of the pharmacist was necessary. Others thought the pharmacist's participation could take place by means of written comment. Still others thought that the pharmacist should have input from the indisciplinary group instead of the pharmacist participating, as appropriate, in the development of the client's IPP.

Response: We have accepted the suggestion of the commenters who thought the pharmacist could participate in the IPP by means of a written report and have revised the regulations accordingly at § 483.460(j)(5). We also agreed with the commenter who suggested that the pharmacist reviewer must conduct reviews with input from the interdisciplinary team and have added this provision to the final rule at § 483.460(j)(1).

Comment: We received only one public comment on the issue of requiring a pharmacist rather than a registered nurse to conduct quarterly drug regimen reviews. However, we received many comments on this issue in response to a proposed rule published on May 16, 1986 (51 FR 17997) concerning drug regimen reviews in skilled nursing and intermediate care facilities. In that proposal, we again had stated that we would allow either a pharmacist or a nurse to conduct these reviews. Approximately 100 commenters objected stating that they believed that only a pharmacist should conduct the reviews. The commenters stated that registered nurses did not have the time or the knowledge base to conduct the reviews adequately. As a result of the public comments concerning drug regimen reviews in skilled nursing and intermediate care facilities, we issued, on June 15, 1987 (52 FR 22638), a final regulation that permits only a pharmacist to conduct these reviews in skilled nursing and intermediate care facilities.

Response: In response to the public comments received on the May 16, 1986 rule, and in order to achieve consistency in the regulations, and because we believe that the proper conduct of these reviews can best be assured by requiring that a pharmacist perform them, we have modified the final rule to permit that only a pharmacist may conduct these reviews.

JJ. Drug Administration (Proposed § 442.484; Final § 483.460(k))

Comment: There were 49 commenters who expressed opinions on this proposed standard. A significant number of these commenters objected to the requirement at the proposed § 442.484(b) for administering drugs without error. Many felt this standard was unrealistic and asked that it be deleted. Others believed that medication errors should be addressed but some tolerance should be allowed. Others wished to defer to State law on this issue, and some complained that the facility should not be held responsible for clients who make errors while "on pass" from the facility. Finally, one commenter complained that the facility would modify records to cover-up medication errors.

Response: We have carefully reviewed these comments and our current survey procedures for identifying medication errors and have decided not to modify the proposed regulation. The current surveyor procedure for medication errors relies on an observation technique and not on records. It allows an overall tolerance of five percent for non-significant medication errors but faults the facility for any one error considered a threat to the health and safety of an individual client. This medication error detection methodology has been in use for several years and has demonstrated its ability to change the behavior of the facility so that errors are identified and a genuine effort is made to reduce their incidence. The surveyor procedure used to detect medication errors does not include the observation of drugs administered while clients are "on pass" from the facility. Since medication errors have been shown to be a significant problem in a wide variety of health care facilities, we are retaining this requirement unchanged.

Comment: A significant portion of the commenters also expressed concern about the provision at the proposed § 484.484(g) that would require a pharmacist to package and label all drugs used by the client while the client is not under the direct control of the facility. This proposal was an effort to assure proper labeling and packaging of the drugs that clients must possess while enroute to and at various off-site workshops, classes, and home visits. Many commenters expressed concern about the availability of the pharmacist to perform this task on short notice as is the case with many home visits. Another commenter emphasized that some States now have standards that allow facility

personnel under specific circumstances to repackage and label drugs for clients "on pass".

Response: We were convinced by these arguments and have modified the final regulation (§ 483.460(k)(7)) to state that such drugs are "packaged and labeled in accordance with State law" instead of "packaged and labeled by the pharmacists".

Comment: Several commenters complained that medication errors and adverse drug reactions when they do occur should be reported only to a physician and not to the registered nurse as would be allowed under the proposed § 442.484(i).

Response: We have accepted this comment. We are not including registered nurses among those to whom these events can be reported.

Comment: There was general support for the use of unlicensed personnel to administer drugs if State law permits. However, some commenters expressed concern about the proposed regulation at § 442.484(c) that would require a registered nurse to teach unlicensed personnel about the facility-specific aspects of drug administration.

Response: The original objective of this training was to assure that the unlicensed personnel have training in the unique aspects of a particular facility's drug distribution system. Because this requirement may present interpretive problems and because the objective is basically covered under the standard for staff training at § 483.430(e) of this final rule, it has been deleted as a specific requirement under the standard for drug administration.

KK. Drug Storage and Record Keeping (Proposed § 442.486; Final § 483.460(l))

Comment: One commenter wanted to add a requirement to the proposal to require the pharmacist to inspect drug storage areas in the facility.

Response: We have no objections to a pharmacist periodically inspecting drug storage areas and reporting problems to the facility. However, we do not believe that it is necessary to mandate this through regulation.

Comment: One commenter suggested that the receipt and disposition of controlled drugs be reconciled on a routine basis (for example, every shift or everyday) rather than on a sample basis as required by the proposed rule at § 442.486(d).

Response: We do not wish to mandate a routine reconciliation of controlled drugs unless a sample reconciliation indicates a more frequent reconciliation is necessary (for example, in the case of missing controlled drugs). We believe it is unnecessary to require a facility to perform routine checks for missing controlled drugs unless there is a good reason to do so.

LL. Labeling (Proposed § 442.488; Final § 483.460(m))

Comment: One commenter objected to the requirement at proposed § 442.488(b) that would prohibit the facility from retaining outdated drugs or drugs with missing or torn labels. The commenter suggested that such drugs be removed from use.

The same commenter suggested that drugs discontinued by the physician be "immediately removed from the client's current medication supply" rather than the wording at proposed § 442.488(c) that states that such drugs must "not be available for administration".

Response: We have accepted both of these comments and have incorporated the new language into these final regulations.

MM. Laboratory Services (Proposed § 442.489; Final § 483.460(n))

Comment: There were seven commenters on the proposed requirement at § 442.489(d)(1) that the laboratory director must be either a pathologist or a doctor of medicine or osteopathy with training and experience in clinical laboratory services; or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services. Most of the commenters felt that the requirements were unnecessarily high. Commenters had a variety of suggestions for changing the provision, such as requiring: a baccalaureate degree with a major in a physical, chemical, or biological science plus appropriate experience; a laboratory technologist certified by the American Society of Clinical Pathologists; a trained laboratory technologist with regular consultations from a Clinical Pathologist. One commenter said the requirement should be guided by State law.

Response: We have not adopted the comments requesting lower qualifications for the position of laboratory director. However, currently the Department has underway a thorough review of all clinical laboratory regulations. During the next year, the Department will be proposing regulation changes and other reforms intended to remove inconsistencies and eliminate unnecessary credentialing requirements while continuing to ensure patient health and safety. We have adopted the request that the requirement be guided by State law when State laws address the qualification requirements for directors of laboratory services.

Comment: Two commenters felt that requirements for laboratory services in ICFs/MR should be the same as the conditions for coverage of services of independent laboratories found at 42 CFR Part 405, Subpart M.

Response: The proposed requirements for laboratory services in ICFs/MR are fundamentally the same as the conditions for coverage of services of independent laboratories currently found in Subpart M. For example the requirements contained in Subpart M at §§ 405.1314(a), 405.1316 and 405.1317 were incorporated into the proposed regulations by the cross reference found in § 442.489 (c), (e) and (f). This cross-reference was retained in the final rule. The personnel requirements in both the proposed and final laboratory standards are considerably less detailed than those found in Subpart M. As stated in our response to the previous comment, the Department has currently underway a thorough review of all clinical laboratory regulations including personnel requirements. Following this review, changes to the regulations may be proposed that would impact on laboratory services, including laboratory services in ICFs/MR.

Comment: Two commenters felt that it may be necessary to limit laboratory testing in small institutions of under 50 beds. Additionally one of the commenters recommended prohibiting on-premises testing in those facilities with 16 or fewer beds.

Response: We cannot accept the comment regarding limiting laboratory testing in small institutions because there is no consensus as to what tests should and should not be performed in smaller facilities. We also did not accept the comment recommending prohibiting on-premises testing in those facilities with 16 or fewer beds. This prohibition is unnecessary because we believe that such small facilities would not attempt to meet the laboratory services requirements in order to do the few tests their clients might require. The new regulations will, however, require small facilities that collect their own specimens to refer those specimens for testing to laboratories that are approved for participation in the Medicare program.

Comment: Several commenters felt that the proposed regulations were unclear with regard to when or if facilities are to provide laboratory services.

Response: We agree with the commenters that the proposed regulations were unclear on these

points. The proposed § 442.489(b) stated, "If an ICF/MR that meets the requirements of this subpart operates its own laboratory, the laboratory must * * *". The intent of the proposal was to permit facilities to choose whether or not they wish to provide laboratory services. If a facility does wish to provide these services, it must meet the proposed requirements of § 442.489. To make this point clear, we have incorporated in the final regulations at § 483.360(n) language that reads, "If a facility chooses to provide laboratory services", the laboratory must meet the specified requirements.

Comment: Commenters stated that it was unclear whether or not the laboratory is simply to be used as a drawing station for the collection of specimens which are then sent out to an independent laboratory for study.

Response: The proposed requirements for laboratory services were not intended for a laboratory that operates only as a drawing station. We indicated in the proposal at § 442.489(a) that for purposes of this section, "laboratory" would mean a facility for the performance of specified laboratory tests. Nothing in the proposed or final regulations, however, prohibits an ICF/MR from operating a drawing station; that is, the referral of specimens to other laboratories. We have attempted to make this clear in the regulation by requiring that if the facility chooses to refer specimens for testing to a laboratory, the referral laboratory must be approved by the Medicare program either as a hospital laboratory or an independent laboratory.

Comment: Section 442.416 of the proposed regulations would require that facilities must be in compliance with all applicable provisions of Federal, State and local laws. The proposed regulations at § 442.489(b)(1) would require that a laboratory be licensed or approved according to State law if it is located in a State that provides for the licensing or approved of laboratories. Commenters stated that this is duplicative and therefore should be removed.

Response: We have accepted this comment and have removed this provision from the standard on laboratory services.

NN. Client Living Environment (Proposed § 442.500; Final § 483.470(a))

Comment: Several commenters noted that there is an apparent contradiction in the proposed § 442.500 between paragraph (a), which would prohibit a facility from housing together clients of grossly different ages, developmental levels, and social needs unless the housing promotes their mutual growth and development, and paragraph (b), which would prohibit segregating clients on the basis of physical handicaps and requires integration of physically handicapped clients with others of comparable social and intellectual development.

Response: We note that a client living pattern which takes into account such factors as age, developmental levels, and social needs (paragraph (a)) is not equivalent to a client living pattern based on physical handicap (paragraph b)). Paragraph (a), in referring to "grossly different ages," is intended to ensure, for example, that very young children are not inappropriately housed together with much older, adult clients. While it can be argued that a certain degree of client mix promotes normalization, extreme differences may in some instances actually impede appropriate training and pose a threat to the safety of younger, more vulnerable clients. If clients of grossly different ages, developmental levels, or social needs are housed in close proximity, the facility must demonstrate that it has planned this housing to promote the clients' mutual growth and development. Paragraph (b), on the other hand, prohibits segregation on the basis of physical handicap: that is, housing clients together only because they have physical disabilities. This paragraph indicates that the facility should house its clients based on common skill levels; that is, comparable social and intellectual levels of development, rather than by physical disability. Therefore, we do not believe that there is any contradiction between paragraphs (a) and (b).

Comment: A number of commenters asserted that the proposed prohibition of segregation by handicap under § 442.500(b) of the proposed rule potentially conflicts with other important objectives, such as the ability to address individual clients' specialized training needs; fire safety (for example, placement of wheelchair-bound clients near fire exits); and the ability to establish specialized ICFs/MR for clients with specific developmental disabilities.

Response: We do not believe that clients with a common physical disability necessarily must be housed together in order to meet their specialized training needs. Such housing would be appropriate only if all of the clients with a particular disability also happened to be at the same skill level and, thus, had identical training needs. Again, in this situation, the facility should look to the client's skill level, rather than physical disability, in determining appropriate housing patterns.

Regarding the comment about the possible effect of housing patterns based on concerns for fire safety, we note that housing of non-ambulatory individuals currently is permitted in facilities such as community group homes, as long as the facility meets applicable fire safety requirements. Also, we do not believe that the provisions of this section of the regulations prevent the establishment of specialized ICFs/MR for clients with specific developmental disabilities, since it does not deal with the types of individuals that a facility admits, but only with the housing of clients once they are admitted.

Comment: Some commenters suggested that, in the proposed § 442.500(b), the term "handicaps" should be replaced with "disabilities," and the term "epileptic" should be replaced with "persons with seizure disorders".

Response: We accept these comments, and have revised the final regulations accordingly.

Comment: One commenter suggested that, in implementing these regulations, a distinction should be made between large facilities and small homes.

Response: The basic purpose of this provision is to establish the general principle that the facility should house together clients who are at comparable developmental levels, and to permit housing of disparate clients together only if it promotes their mutual growth and development. We believe that a special distinction regarding small facilities is unnecessary, since the population in such settings normally tends to be more homogeneous. Also, we note that even in small facilities, these regulations do not preclude housing clients at different developmental levels in close proximity, as long as the housing promotes their mutual growth and development.

OO. Client Bedrooms (Proposed § 442.502; Final § 483.470(b))

Comment: We received comments suggesting that various provisions of current regulations §§ 442.436 (Personal possessions); 442.442 (Resident clothing); and 442.404(g)(6) (permitting married couples to share a room) relating to individual rights should be retained.

Response: Section 442.401(k) of the proposed regulations (final § 483.420(a)(11)) already addressed two of the commenters' concerns in that it would require that clients be permitted to retain and use personal possessions and appropriate clothing. We are

restoring the provision regarding married couples sharing a room to the section on protection of clients' rights (final regulations at § 483.420(a)(12)).

Comment: Two commenters suggested adding a requirement for an appropriately sized window to the proposal at § 442.502(a)(1) that would require each room to have at least one outside wall.

Response: This requirement was already addressed in the proposed § 442.508(a)(1) that would require each bedroom to have at least one window to the outside, and in the proposed § 442.502(b) that would require that the window in a below-grade bedroom be usable as a second means of escape. In the final rule, these provisions are lcoated at § 483.470(b)(1) and (2)(i).

Comment: Several commenters requested us to define "newly certified," as used in the proposed § 442.502(a)(5) that would require floor-to-ceiling walls in all "newly certified" facilities.

Response: We are revising the final regulations at § 483.470(b)(1)(v) to clarify our intent. In the final rule, we have used the word "initially" instead of "newly", and have modified the regulation so that all facilities "initially certified" on or after the effective date of these regulations must have walls that extend from floor to ceiling. This regulation affects only those facilities "initially certified" after the effective date of the regulations. A facility that is certified for participation in Medicaid after a period of non-participation (because its certification had been terminated or voluntarily withdrawn) is considered an "initial certification" and will be required to install floor to ceiling walls.

We note that the proposed rule did not address the issue of floor to ceiling walls when an ICF/MR carried out new construction, renovation or conversion. To address this issue, we have modified the regulation so it requires a facility to install floor to ceiling walls in newly constructed portions and during major renovations or conversions. We will explain in interpretive guidelines that, in our view, "new construction and major renovations or conversions take place if: (1) Clients must vacate the facility; (2) no Medicaid billing takes place; (3) a resurvey is required before clients return.

Comment: Several commenters requested clarification of proposed § 442.502 paragraph (b) that would permit below-grade bedrooms and provide specifications for windows in them. Points requiring clarification included: ground level versus floor level windows; requiring that windows be usable as a means of escape by the client occupying the room; and, that window measurements are taken from the sill.

Response: We are revising the final regulations at § 483.470(b)(2) to clarify that, in a below-grade level bedroom, the window must be no more than 44 inches above floor level (for facilities surveyed under the Health Care Occupancy Chapter of the Life Safety Code, the window must be no more than 36 inches above the floor); that the window must be usable as a second means of escape by the client occupying the room; and, that floor-to-window measurements are taken to the sill.

Comment: Since the proposed § 442.502(c) mentions only a medical basis for granting a variance to permit more than four clients per bedroom, a physician, rather than psychologist, should make this determination.

Response: We agree with this comment, and will delete the words "or psychologist" from the language describing the type of individual that can grant a variance to the limit of four clients per bedroom (final regulation § 483.470(b)(3)).

Comment: One commenter suggested granting a variance to the four-client-per-bedroom limit for behavioral as well as medical problems; still others suggested eliminating the variance provision altogether, or granting a variance only with the interdisciplinary team's approval. Other commenters recommended a maximum of two, rather than four, clients per bedroom.

Response: We are retaining the variance provision. While we do not regard broadening the variance procedure (for example, to include behavioral problems) as appropriate, we also believe that eliminating the variance altogether would pose serious problems for some facilities.

Comment: A number of commenters requested clarification of the proposal at § 442.502(d)(2) that would require a "fire safe" mattress. Several indicated that a mattress which is literally fire safe is impossible to obtain or, at best, is uncomfortable, expensive, and inappropriate for use in a health care facility. Others suggested requiring instead a "fire resistant" mattress cover or simply a reference to applicable Life Safety Code or National Fire Protection Association standards.

Response: The Consumer Product Safety Commission (CPSC) administers regulations that prohibit the sale of mattresses that have not passed their requirements for Flammability of Mattresses (and Mattress Pads) (16 CFR Part 1632). These regulations prohibit the sale of mattresses manufactured or imported in the United States unless they have passed a standard test for cigarette ignition, which is generally regarded as being one of the leading causes of mattress fires. These requirements became effective June 22, 1973. Thus, all mattresses purchased by ICFs/MR after that date were subject to CPSC requirements. As facilities replace mattresses, we expect this potential risk to diminish (a CPSC study of hotels and similar occupancies showed that about ⅔ of the mattresses have been replaced since June 22, 1973). Because CPSC enforces these regulations, there is no need for HCFA to establish separate standards defining fire safe mattresses. Therefore, in these final regulations we have deleted the reference to fire safe mattresses.

Comment: One commenter requested that the proposed requirement at § 442.502(d)(3) for appropriate bedding be clarified specifically to permit the use of a single bedspread year-round if it is appropriate for all seasons. Several others suggested that the proposal at § 442.502(d)(4), which would require an individual closet for each client, be changed to allow the alternative of individual space in a shared closet.

Response: With regard to bedspreads, we believe that interpretative guidelines would be a more appropriate vehicle for making this clarification, and we will include it in the guidelines when they are published.

With regard to closets, we are clarifying the final regulations at § 483.470(b)(4)(iv) by requiring the facility to provide each client with individual closet space in the client's bedroom. This permits the facility either to provide the client with an individual bedroom closet or with a designated area in a shared bedroom closet, but precludes the use of clothing bins in a facility clothing room.

Comment: Some commenters indicated that the proposed § 442.502(d)(4), in describing bedroom furniture, should simply require furniture "as appropriate to the needs of the client" rather than requiring a desk for a client who cannot use it. Another commenter suggested that a night table be required rather than a table or desk, as being closer to normal bedroom furniture.

Response: Regarding the types of "appropriate" furniture described in this provision, we note that these items are mentioned as illustrative examples only; we did not intend this language to require a particular type of furniture, such as a desk, for a client who is unable to use it, or for whom it is otherwise contraindicated. Rather, each client should have furniture, appropriate to his or her needs, that is used by the

client alone. However, in order to avoid possible confusion, we are deleting the examples and revising the final regulations at § 483.470(b)(4)(iv) to require that the facility furnish each client with functional furniture appropriate to that client's needs. We use the descriptive term "functional" furniture to distinguish these items from the use of decorative "furnishings," such as plants, pictures, etc., which, though encouraged as being an appropriate and desirable aspect of a normalized living environment, cannot serve as a substitute for appropriate furniture.

PP. Storage Space in Living Units (Proposed § 442.504; Final § 483.470(c))

Comment: One commenter requested that we define "living unit" as used in the proposed §§ 442.504, 442.508 and 442.510.

Response: We are deleting this term where it appears in the proposed regulations, and substituting the terms "bedroom" and "area used by clients", as appropriate.

Comment: One commenter suggested that proposed § 442.504(b) should provide not only for storage of the client's personal possessions, but for the safety of these possessions as well.

Response: We believe that the safety of the possessions is implied in the requirement that there be "suitable" storage space, therefore, no change is being made.

Comment: Another commenter on proposed § 442.504 paragraph (b) advocated limitations on accessibility of personal possessions under a behavior modification program or when the interdisciplinary team determines that access would endanger the client or others.

Response: We agree that limitations on accessibility of personal possessions can be appropriate in certain situations. However, we do not believe that prescriptive regulations are necessary in order to permit this. Proposed paragraph (b) merely requires that the client have access to the space in which his or her personal possessions are ordinarily stored. While this implies access to the possessions themselves, it does not require unrestricted access in situations where this is precluded by an active treatment program designed to eliminate inappropriate behavior or in which the interdisciplinary team determines that unrestricted access would endanger the client or others.

Comment: The proposed § 442.504(c) would require adequate clean linen and dirty linen storage areas. Several commenters said that small facilities should not be required to have separate storage rooms for clean and dirty laundry; rather, it would be sufficient to require specific procedures to prevent contamination and unsanitary practices. Others suggested that we permit a bedroom hamper, if sanitary and odor-free, to be used for dirty laundry storage.

Response: The laundry storage requirement in this provision requires clean linen and dirty linen storage "areas" rather than "rooms." This means that clean linen and dirty linen must be stored separately, but need not be stored in different rooms. A bedroom hamper would be an acceptable dirty linen storage "area" if kept clean and odor-free, consistent with the infection control requirements of final regulations at § 483.470(l).

QQ. Client Bathrooms (Proposed § 442.506; Final § 483.470(d))

Comment: One commenter suggested that under the provisions of the proposed § 442.506 each bathroom should be equipped with a mirror and sink/toothbrush training area.

Response: We believe that this is already implied in proposed § 442.506(a)'s requirement for "bathing facilities appropriate * * * in design to meet the needs of the clients".

Comment: Several commenters expressed concern about the proposed requirement for bathroom privacy unless contraindicated by the client's condition. One commenter stated that any contraindications to bathroom privacy should be determined by the interdisciplinary team and should be indicated in the client's individual program plan.

Response: We agree with those commenters who stated that individual privacy in toilets, bathtubs, and showers does not preclude assistance given from the facility's staff when necessitated by the individual client's condition. Accordingly, we have deleted the provision "unless contraindicated by the client's condition" from the final rule at § 483.470(d)(2). However, we do not think that the regulations should attempt to identify every situation that can conceivably be placed in the individual program plan. Placement of this information in the IPP should be at the discretion of the facility.

Comment: Other commenters stated that exceptions to privacy should be programmatic rather than incorporated in the physical plant and asserted that locked bathroom doors should be encouraged when appropriate.

Response: As noted above, the provisions of the regulations already assure bathroom privacy. We do not believe it is necessary to include prescriptive provisions in the regulations regarding structural design or use of locked bathroom doors.

Comment: Another commenter stated that privacy should extend through the entire living unit, not just the bathroom.

Response: We agree with the general objective of providing for privacy, whenever possible, in the client's living unit; however, this objective must be balanced against the need for a reasonable degree of interpersonal contact and interaction, in order to approximate more closely a normalized environment. In this context, we believe that the client's general right to privacy is already sufficiently ensured by final regulations at § 483.420(a)(7) that require that each client is provided with the opportunity for personal privacy.

Comment: A number of comments were received on proposed § 442.506(c), which restricts water temperature from hot water taps to 110 degrees F. or less in areas of the facility serving clients who have not been trained to regulate water temperature. Several of these commenters expressed support for the exception to the temperature restriction for suitably-trained clients, noting that this offers a more normalized setting; others noted that the regulations need to be flexible enough to address facilities where clients are participating in (but have not yet completed) a training program to regulate water temperature.

Response: We believe that the issue of clients who are in the process of being trained to regulate water temperature can be addressed in interpretive guidelines, which would be based on the assumption that such clients are under direct supervision while being trained to operate hot water temperature controls.

Comment: One commenter suggested a waiver of the water temperature restriction when the program director can demonstrate that client safety is addressed by means other than a control valve.

Response: The regulations require only that water from the hot water tap be maintained at or below a prescribed temperature if clients have not been trained to regulate temperature, but do not prescribe the specific method (such as a control valve) for doing so.

Comment: One commenter asserted that having hot water temperatures below 120 degrees F. results in the water temperature being too cold for showers.

Response: We believe that the longstanding limit of 110 degrees F. represents an acceptable balance between comfort and safety factors, and should be retained. A hot water tap that is limited to this temperature, when appropriately operated in conjunction with the cold water tap, should produce

sufficiently warm water temperatures to ensure comfort without posing a threat to the safety of clients who have not been trained to regulate water temperature.

RR. Heating and Ventilation in Living Units (Proposed § 442.508; Final § 483.470(e))

Comment: One commenter suggested that the proposed § 442.508(a)(1) that would require each client bedroom to have at least one outside window, be changed to at least one outside window or door (that is, allow a door to be used for room ventilation in lieu of an outside window).

Response: Since a door serves primarily to provide egress rather than to perform the ventilation and aesthetic functions of an outside window, we do not believe the language in the proposed rule should be changed. In addition, the outside window serves in an emergency as an alternate means of escape from a below-grade bedroom (see final regulations § 483.470(b)(2)(i)).

Comment: Three commenters requested that we include a definition of the term "normal comfort range" in the proposed § 442.508(b)(1).

Response: We plan to address this issue in interpretive guidelines, which would define a normal comfort range in most instances as not going below a temperature of 68 degrees F. or exceeding a temperature of 81 degrees F. However, the term could also be interpreted to include temperatures that exceed the upper range of 81 degrees F. for facilities in geographic areas of the country (primarily at the northernmost latitudes) where that temperature is exceeded only during rare, brief episodes of unseasonably hot weather. This interpretation would apply in cases where it does not adversely affect client health and safety, and would enable facilities in areas of the country with relatively cold climates to avoid the expense of installing air conditioning equipment that would only be needed very infrequently.

SS. Floors in Living Units (Proposed § 442.510; Final § 483.470(f))

Comment: Regarding the proposed requirement at § 442.510(a) for floors with a "slip-resistant" surface, one commenter noted that any surface is slippery when wet. Regarding the proposal at § 442.510(b) for "nonabrasive" carpeting is carpeted areas serving clients who crawl, this commenter noted that additional factors should be considered as well, such as mobility, sanitation, and safety. The commenter suggested that we require only that attention be given to floor coverings in living units based on the needs of the clients living therein.

Response: We note that the regulations do not require that floors be "slip-free," but merely "slip-resistant;" there is a presumption that the floor surface will ordinarily be dry and when wet, precautions taken. Regarding the comment concerning mobility, sanitation, and safety, we are adding a requirement to final regulations at § 483.470(f)(3) for exposed floor surfaces and floor coverings to promote mobility and maintenance of sanitary conditions.

Comment: One commenter suggested rewording of proposed § 442.510(b) that would require nonabrasive carpeting (if the floors are carpeted) for clients who crawl. The commenter thought the phrase "clients who crawl" should be replaced with "clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor."

Response: We agree with this comment, and have revised the final regulations at § 483.470(f)(2) to include this language.

TT. Space and Equipment in Dining, Health Services and Program Areas (Proposed § 442.512; Final § 483.470(g))

Comment: Regarding the proposed § 442.512(a), that describes space and equipment requirements for various activities, two commenters suggested that we specifically mention recreation and leisure activities.

Response: We agree with this comment, and have added in final regulations the word recreation to the list of areas (for example, dining, program areas) for which the facility must provide sufficient space and equipment.

Comment: One commenter suggested that the space and equipment requirement be relocated under the nursing services section of the active treatment provisions.

Response: We believe that this requirement is appropriately located as proposed, in the section dealing with physical environment. Issues directly involving health services are already adequately dealt with elsewhere in these regulations.

Comment: The proposed rule at § 442.512(b) would require the facility to furnish, maintain in good repair, and encourage the use of devices such as dentures, eyeglasses, hearing and other communications aids, and braces needed by clients. Almost all of the comments we received on this paragraph stressed that the facility should be responsible for furnishing these items only if Medicaid will pay for them; if Medicaid will not cover these items, the facility should only be required to facilitate their acquisition or assist clients in purchasing them.

Response: We note that, under these regulations, the above items are included in the ICF/MR benefit, even though a particular State may elect not to cover them separately for non-ICF/MR recipients. The Medicaid statute (at section 1902(a)(13)(A)) states, in part, that payment rates for ICF/MR services must be "* * * reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards * * *". Thus, we would expect a State's ICF/MR payment rates reasonably to reflect the various items and services which constitute the ICF/MR benefit.

Comment: With respect to dentures, eyeglasses, etc., one commenter asked us to define the terms "furnish" and "maintain in good repair".

Response: The term "furnish" in this context indicates that the facility is responsible (including financial responsibility) for obtaining these items, and is responsible for making any necessary arrangements to enable the client actually to receive them. (If an item is available free of charge, the facility would satisfy this requirement simply by making the necessary arrangements for the client to receive it.) The term "maintain in good repair" indicates that the facility is responsible for ensuring that these items are kept in good working order, and is responsible for any resulting expense that may be incurred. As noted above, we would expect a State's ICF/MR payment rate to reflect reasonably these items and services.

UU. Emergency Plan and Procedures (Proposed § 442.550; Final § 483.470(h))

Comment: One commenter stated that the proposed regulation at § 442.550, that would require a facility to make its plan for emergencies available to staff, should also require that staff be trained in implementation of the plan.

Response: As we had proposed, the facility is charged (see final regulations at § 483.470(h)(2)) with the responsibility of training the staff in use of the emergency plan and procedures.

Comment: One commenter requested clarification of the term "periodically review", as it was used in the proposed § 442.550(b), that would require that a facility periodically review its plan to meet emergencies and disasters.

Response: We will explain in interpretive guidelines that the periodicity of this review is a judgment made by the facility based on the circumstances of the facility. If the facility changes its physical plant or if changes external to the facility necessitate a review of the disaster plan, then the facility is responsible for carrying out that review.

VV. Evacuation Drills (Proposed § 442.552; Final § 483.470(i))

Comment: One commenter suggested that the proposed rule at § 442.552 that requires evacuation drills include provisions for the non-evacuation of those whose health precludes evacuation during drills.

Response: We do not agree with this comment. The drills required by this section are not only for fire but for other disasters such as hurricanes, tornadoes, floods, etc. In these circumstances, the entire occupancy may have to be evacuated. Thus, the entire occupancy must practice these drills.

Comment: The proposed rule reserved § 442.554. One commenter suggested that we use the reserved section to include explicit requirements on building accessibility for the physically handicapped.

Response: The issue of building accessibility is covered by civil rights laws which are invoked under final regulations at § 483.410(b), Compliance with Federal, State and local laws. The Office for Civil Rights implements Department-wide regulations (see 45 CFR 84.22 and 84.23) relative to building accessibility for the physically handicapped and HCFA does not wish to duplicate or conflict with those regulations.

Comment: One commenter proposed adoption of the "buddy system" of evacuation and was concerned that drills not be conducted in sub-zero weather without assistance.

Response: There is nothing in the proposed regulation that would preclude the use of the "buddy system". The regulations do require drills to be conducted under varied conditions but we would not expect drills to be conducted in sub-zero weather.

Comment: The proposed § 442.552(a) would require evacuation drills to be conducted under "varied conditions". One commenter suggested that the term "varied conditions" be defined.

Response: We will explain in interpretive guidelines that the term "varied conditions" principally refers to different times of the day and night and location of clients in respect to rooms in the building. It also refers to weather conditions since quarterly drills would necessitate varied weather conditions.

Comment: One commenter expressed concern that fire safety standards not be used to exclude persons with physical handicaps.

Response: The adoption of the 1985 Life Safety Code (see **Federal Register,** Friday, April 18, 1986, page 13224) incorporates chapter 21 of the Code that defines three levels of physical plant requirements depending on the ability of clients and staff to evacuate the building in the event of fire. This new chapter of the Life Safety Code may enable individuals with physical disabilities to reside in the facility depending on the disability, the staff in the facility and the physical plant characteristics. We expect that the adoption of Chapter 21 of the Code will allow many more clients with physical disabilities to reside in small facilities than was previously the case.

Comment: One commenter suggested that each facility be required to have at least one fire extinguisher per floor.

Response: The Life Safety Code specifies extinguishment requirements for various types of occupancies. As a consequence of the adoption of the 1985 Life Safety Code (see **Federal Register,** Friday, April 18, 1986, page 13224) HCFA has adopted the extinguishment requirements of that Code.

Comment: Several commenters expressed concern that requirements for evacuation drills do not allow a client to move to a "safe area" or from one smoke barrier to another as current regulations allow.

Response: We have modified the final regulation at § 483.470(i)(2)(v) to allow for evacuation to "safe areas" in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code (note that current regulations found at 42 CFR 442.506(b)(1) allow evacuation to a safe area).

Comment: One commenter stated there should be greater emphasis on staff training for fire evacuation drills. Another commenter thought that clients should have evacuation drills as part of their IPP.

Response: We believe that the proposal is adequate in the number of training drills it requires staff to conduct. Additionally, it could be very appropriate to include evacuation drills as part of an IPP if the interdisciplinary team, as a result of the client's comprehensive functional assessment, determined that improved performance during evacuation drills was of high priority for the client to learn. In any case, the final rule at § 483.440(c) (3) and (4) requires that objectives, reflective of a client's needs, be included as part of the IPP.

Comment: One commenter thought that the time it takes clients to evacuate a building would determine what fire safety requirement the facility must meet. That is, the slower the clients exit the building the more fire safe it must be.

Response: Evacuation drills conducted by the facility will not be the criteria for deciding which physical plant requirements a facility must meet in order to comply with Life Safety Code requirements. The State surveyor will determine the level of fire safety requirements on the basis of an objective assessment of the clients, the staff and characteristics of the physical plant.

Comment: One commenter asked whether these regulations should contain a reference to the Life Safety Code.

Response: We have included in final regulations at § 483.470(j) requirements for meeting the Life Safety Code. These requirements are located in current regulations at § 442.508.

Comment: Several commenters indicated that the distinction made in the proposed § 442.552(b) between clients who can cooperate and cannot cooperate in an evacuation is confusing and open to different interpretations. Another commenter did not feel that the proposed requirement for three evacuation drills per year was satisfactory for clients who could not cooperate.

Response: We have deleted in final regulations the reference to clients who can and cannot cooperate. Instead, we are retaining the language of current regulations at § 442.506 that require all clients actually to evacuate during at least one drill each year on each shift.

Comment: One commenter indicated that fire drills should be unannounced.

Response: Good practice dictates that actual, full drills be unannounced, since real emergencies (fire, tornadoes, gas clouds), are immediate and unexpected. However, in order to train staff and clients in evacuation procedures, it is often necessary to practice evacuations without the element of surprise. Thus, it is not possible or advisable simply to require that all drills be unannounced. Rather, by requiring the drills, we meet Life Safety Code requirements and still leave to the facility needed flexibility in how the drills are accomplished.

WW. Paint (Proposed § 442.556; Final § 483.470(k))

Comment: One commenter suggested that a new requirement stating that

clients cannot be housed in buildings that contain asbestos ceilings or insulation be added to the proposed § 442.556 that contained requirements concerning lead paint.

Response: We fully appreciate the importance of ensuring protection from the hazards of exposure to asbestos fibers within buildings. We note that Congress also is concerned with this issue, as evidenced by its enactment last year of the Asbestos Hazards Emergency Response Act. This legislation established a program under which the Environmental Protection Agency (EPA) sets standards to inspect for, identify, and abate hazardous asbestos in schools. Congress is currently considering legislation that would direct the EPA to expand these activities to include nonschool buildings. In view of this pending legislation, and EPA's experience and technical expertise in this area, we do not believe it would be appropriate for HCFA unilaterally to impose its own standards on asbestos abatement.

Comment: One commenter suggested the proposed regulation be modified to state that paint or plaster containing lead must be removed rather than "removed or covered"

Response: We believe this suggestion would create an unnecessary hardship on facilities. We believe that client safety and health will be assured by requiring the facility either to remove or cover interior paint containing lead.

Comment: One commenter indicated that in the past there was a requirement that paints be non-flammable, and asked if this requirement was still applicable.

Response: We were unable to locate a Federal ICF/MR regulation that prohibited the use of flammable paints.

XX. Food and Nutrition Services (Proposed § 442.558; Final § 483.480(a))

Comment: Several commenters indicated that the proposed § 442.558(a) would unnecessarily restrict facilities because it would require that the facility actually provide each client with a nourishing, well balanced diet. They note that while clients are in "day care" programs the facility cannot be held responsible for the food served.

Response: We agree that emphasis should be placed on the client outcome of receiving an appropriate diet rather than on the facility's provision of it and have amended final regulations by indicating that each client must receive an adequate diet even though the facility does not provide it directly. However, responsibility for the food served to clients by outside programs continues to remain with the ICF/MR, as the legally responsible entity.

Comment: One commenter suggested that the regulation be modified to require a nourishing, well-balanced diet to "meet the individual needs of the clients".

Response: We do not agree that addition of this phrase is necessary. The final regulations at § 483.480(a)(1) include language that states that "each client must receive a nourishing, well-balanced diet". A diet cannot be nourishing nor well balanced for each client unless his or her individual needs have been addressed.

Comment: One commenter suggested that a new section be added to indicate that if behavior modification programs include the use of food, such programs must be reviewed by a registered dietitian to assure provision of a nutritional diet.

Response: We agree with this comment and have revised final regulations to include a provision at § 483.480(a)(4) that requires the interdisciplinary team, including the physician and the dietitian to participate in decisions that include the provision of food as part of a program to manage inappropriate client behavior.

Comment: One commenter suggested that all facilities be required to maintain a current diet manual, and that the manual be approved by the dietitian and medical director and be kept in a convenient location for use in preparing diets.

Response: We believe this suggestion is too prescriptive and believe that the requirement stating that diets be prepared in accordance with the Food and Nutrition Board of the National Research Council, National Academy of Sciences will help to assure the provision of nutritionally sound diets.

Comment: One commenter suggested that the proposed requirement in § 442.558 that would require diets to be prepared in accordance with the Food and Nutrition Board of the National Research Council be modified to provide flexibility for individual choice in food for those clients in independent cooking programs.

Response: These regulations do not preclude a facility from providing individual food choice for clients participating in an independent cooking program.

Comment: One commenter asked whether every facility would be required to obtain a copy of the dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

Response: If a facility can prepare meals in accordance with the standards specified without having a copy (for example, through its dietitian), then it need not possess a copy.

Comment: One commenter pointed out that the standards set by the Food and Nutrition Board of the National Research Council, National Academy of Sciences represent minimum guidelines and not a maximum, and that the nutritional needs of some clients may not be met by compliance with a minimum standard.

Response: We agree and have modified final regulations accordingly. As amended, the language of the final rule at § 483.480(a)(6) requires that diets must be prepared *at least* in accordance with the Food and Nutrition Board standards.

Comment: Two commenters expressed concern that the proposed regulation contains no provisions regarding safety and sanitation in food storage, food preparation or food service.

Response: We believe that these are issues that are well covered by existing State and local laws. Under the final regulations at § 483.410(b), a facility is required to adhere to State and local laws; therefore, we believe there is no need for the suggested change since it would be duplicative.

Comment: One commenter suggested that the duties of the dietitian should be expanded in this regulation to include being responsible for providing annual nutrition assessments and conducting periodic follow-up menu reviews, providing guidance to the food service operations, and being included in the interdisciplinary assessment of client feeding problems.

Response: There is nothing in this section that would preclude the dietitian from performing these functions; however, we believe it is best that each facility utilize personnel according to the facility's individual needs.

Comment: A number of commenters expressed views about the proposed requirement for physician and dietitian participation in decisions about modified and special diets. One commenter wanted other appropriate team members to be involved in decisions about these diets, another questioned the need for a physician and a dietitian to participate in these decisions, and another wanted the interdisciplinary team to make decisions about these diets. Another commenter wanted the physician and dietitian to participate in decisions about the caloric levels and nutritional adequacy of diets. Finally, one commenter wanted the word "participation" to be defined in regulation and another wanted a

definition of "modified and special diets".

Response: We do not believe these regulations should specify who should develop modified and special diets as long as the physician and dietitian participate in those decisions. The physician's and dietitian's participation should assure the necessary quality of modified and special diets, but we do not believe it is necessary to regulate their involvement in caloric levels. The facility as a whole is held responsible for nutritional adequacy as required by § 442.558(a) of the proposed regulations. The words "participates in decisions about" contained in proposed § 442.558(b) have been deleted from final regulations. Instead, the final regulations at § 483.480(a)(4) now require the physician and dietitian, as part of the interdisciplinary team, to prescribe all modified and special diets. Finally, we will define "modified and special diets" in the interpretive guidelines as diets that are needed to enable the clients to eat (for example, food that is chopped, pureed, etc.) or diets that are intended to correct or prevent a nutritional deficiency or health problem.

Comment: One commenter suggested that meals be developed by a Food and Nutrition Unit.

Response: We do not believe it necessary to require a Food and Nutrition Unit. However, there is nothing to preclude the establishment of a Food and Nutrition Unit if an individual facility so desires.

Comment: One commenter suggested that a dietitian-to-client ratio be established in these standards.

Response: We believe that to establish dietitian-to-client ratios would be unnecessarily prescriptive.

Comment: One commenter asked that the dietitian be a part of the "feeding team" and another commenter asked that the dietitian be a part of the "infection control team".

Response: The regulations do not require the establishment of either of these teams. However, if a facility chooses to establish such teams, there is nothing that would preclude a dietitian's participation on these teams.

Comment: One commenter suggested that the "nutrition unit" be required to conduct nutrition education programs for direct care personnel, clients and their families.

Response: Section 483.430(e) of final regulations mandates staff training. We believe that this requirement is sufficient to assure that staff is trained. There is nothing in this regulation that precludes the kind of training suggested by the commenter for clients and their families.

YY. Meal Services (Proposed § 442.560; Final § 483.480(b))

Comment: Several commenters objected to the proposed requirement at § 442.560(a) for actually serving three meals a day to clients, since many clients eat lunch at day care programs.

Response: We agree with these commenters and have modified final regulations to incorporate language at § 483.480(b)(1) that specifies that each client must receive at least three meals each day. This would maintain the facility's responsibility to see to it that clients receive three meals a day without requiring them actually to serve the meals themselves.

Comment: Several commenters stated that the prohibition under § 442.560(a)(1) of the proposed regulations that breakfast be served no longer than 14 hours after the evening meal unnecessarily restricted clients' eating habits on weekends and holidays. They noted that this requirement did not allow clients to sleep in on weekends and holidays.

Response: We agree with the comments and, while we have retained the 14 hour meal span requirement, we have included in final regulations at § 483.480(b)(1) an exception allowing an extension to 16 hours on weekends and holidays if a nourishing snack is served at bedtime.

Comment: Several commenters suggested a change to the proposed standard that requires discarding food that has been served and uneaten. They wanted wording that would allow reuse of food served "family style".

Response: We agree with this comment and have changed the final regulations to include language at § 483.480(b)(3) that requires that when food is served "to clients individually" it must be discarded.

Comment: One commenter objected to the deletion in the proposed rule of a provision in current regulations that requires food to be served under sanitary conditions.

Response: We of course agree that it is important that food be served under sanitary conditions; however, we believe this can best be accomplished by relying on local and State laws. Section 442.416 of the proposed rule, now incorporated into § 483.410(b) of final regulations requires compliance with these laws.

Comment: One commenter suggested that the proposed § 442.560(b) regarding the serving of food be revised to require that food be served in sufficient quality as well as quantity.

Response: The issue of quality was dealt with in proposed section § 442.558 (final § 483.480(a)) that requires a nourishing and well balanced diet for each client.

Comment: One commenter proposed adding a new subsection that would mandate: attention being paid to clients' reasonable food preferences; maintaining records of each client's likes, dislikes, and food allergies; and observing each client to determine acceptance of diet.

Response: While we believe that the ends sought in this comment are laudable, we believe that it is too prescriptive to specify these details in the regulations. We note, however, that the final rule at § 483.440(c)(3)(v) requires that the comprehensive functional assessment of each client must identify the client's nutritional status.

Comment: One commenter suggested adding a new subsection (d) to proposed § 442.560 pertaining to recipes, detailing the number of clients to be served from each recipe and the methods used in recipe preparation to assure nutritional value, texture, flavor and appearance, etc.

Response: We believe these suggestions are too prescriptive in nature to be beneficial.

ZZ. Menus (Proposed § 442.562; Final § 483.480(c))

Comment: One commenter stated that the provision in proposed § 442.562 to include average portion sizes for menu items was not necessary.

Response: We do not believe this requirement should be deleted since it can be used as a tool to help determine adequacy of diet.

Comment: Three commenters indicated that we should require that menus be prepared at least one week in advance of their usage.

Response: We believe this to be overly prescriptive in nature. This is an area where the facility should have flexibility.

Comment: Four commenters wanted a requirement for menu approval by a dietitian for nutritional adequacy and for therapeutic corrections of modified diets.

Response: We believe that the concerns addressed in this comment are addressed in proposed § 442.558, Food and Nutrition Services that requires diets to be nourishing and well-balanced and requires a dietitian and a physician to participate in decisions about modified and special diets.

Comment: One commenter indicated the desire to see a prohibition against

"fast food/junk food" appearing on the menu.

Response: The requirement contained at the proposed § 442.558(a) (final § 483.480(a)) that would mandate that each client receive nourishing, well-balanced meals to assure that clients' dietary needs are met. Whether the foods are considered "fast or junk foods" is not a concern so long as the client is receiving a nutritious and well-balanced diet. Therefore, we have not made this change.

Comment: The remainder of the commenters on this section suggested a variety of additions. One wanted retention of an existing regulation requiring the facility to maintain food purchase records. Another wanted menus to be posted in cooking and serving areas. One commenter wanted a regulation on between-meal feedings. Another commenter wanted a section stipulating that modified diets be accurately written and correctly served. Finally, one commenter suggested greater flexibility for clients trained in food purchases and preparations.

Response: We have not modified the proposed regulations to incorporate these comments. It is our view that these requirements are too restrictive, and that sufficient client protections relative to these issues are already contained in the final regulations at § 483.480 and other sections of the final rule.

AAA. Dining Areas and Service (Proposed § 442.564; Final § 483.480(d))

Comment: One commenter suggested that the proposed requirement for provision of table service to all clients who can and will eat at a table be changed to encompass several levels of client functioning.

Response: We do not believe the regulation should be modified to designate table service classifications by client functional status. Clients of grossly different ages, developmental levels and social needs generally are not allowed to be housed together (see final regulations at § 483.470(a)(1)). We do not believe it necessary to extend this requirement to table service as well.

Comment: One commenter suggested that a new subsection be added that would require the facility to provide enough staff trained in appropriate feeding techniques and client positioning.

Response: The final regulations at § 483.430 (c) through (e) already make provisions for sufficient staff and for the training of that staff. We believe these requirements adequately address these issues.

Comment: Section § 442.564 of the proposed rule would require the facility to serve meals to clients in dining areas unless otherwise specified by the interdisciplinary team or a physician. Two commenters suggested that a dietitian also be allowed to exempt clients from this general rule. Another commenter wanted physicians deleted from the list.

Response: We have not changed this standard. The fundamental reason a client would not eat in a dining area relates to the existence of a medical care plan or because of a behavioral or developmental problem that either the interdisciplinary team or the physician would have knowledge of. If the problem relates to a significant dietary problem, the dietitian would be on the interdisciplinary team as a consequence of that problem and would provide input by that means.

Comment: One commenter believes that the provision in current regulations § 442.472(c) requiring clients to eat in an upright position, unless medically contraindicated, should be retained.

Response: Our final regulations at § 483.480(d)(2) require the facility to provide table service to all clients that can and will eat at a table. They also require at § 483.480(d)(1) that the facility serve all clients in dining areas unless exceptions are made by the interdisciplinary team or a physician. It was our intent that these provisions should be sufficient to assure that clients are fed in an upright position unless medically contraindicated. however, to ensure that our intent is clearly understood, we have mentioned it explicitly in the final rule at § 483.480(d)(5).

Comment: One commenter suggested a new standard be established for food service sanitation that would indicate that sanitary standards must be in compliance with State and local laws.

Response: Such a standard would be redundant since § 483.410(b) of the final regulations requires that facilities must be in compliance with all applicable provisions of Federal, State and local laws pertaining to health, sanitation, safety and research.

Comment: One commenter prescribed a series of requirements that a facility's diet services must include. Among these were requirements relating to specifications for supplies and equipment, standards to assure proper storage of food, and other health and safety features.

Response: In general, we believe these requirements would be too prescriptive and would unnecessarily interfere with the effective management of the facility. Additionally, those suggestions relating to food storage and food health issues are best addressed, we believe, by State and local enforcement of applicable regulations and laws.

Comment: One commenter suggested that paragraph (a) of the proposed § 442.564 should be more flexible since not all meals are served in dining areas; for example, picnics and parties.

Response: We will specify in interpretive guidelines that on special occasions such as picnics and parties, clients would not have to be served in established "dining areas".

IV. Provisions of the Final Rule

We are adopting the provisions set forth in the NPRM with the exception of the changes noted in the "Discussion of Comments" (section III above), including the reorganization of the proposed standards into a condition format and the redesignation of these as a new Part 483. As a result of adopting the conditions format and the redesignation, we are making several conforming changes thoughout the regulations. We also are making many technical and clarifying changes.

The conforming changes that we are making will change references to the standards for ICFs/MR to read "conditions of participation". These changes are located at §§ 442.117, 442.118, 442.119 and 442.254. Other conforming changes at §§ 440.150, 442.30, 442.100, 442.101, 442.105, 442.117, and 442.254 will reflect the move from Part 442, Subpart G to Part 483, Subpart D.

We also are making changes to clarify our policies concerning provider agreements and facility certifications. In § 442.13(c), we are adding language to clarify that it is acceptable for a provider to submit a correction plan only if it meets any applicable conditions of participation. This is consistent with our policy that under conditions of participation, a provider agreement may not be entered into with a facility that has deficiencies at the condition-level. A facility may obtain a provider agreement under certain circumstances with deficiencies at the standard-level. We also are revising §§ 442.101, 442.105 and 442.110 to clarify that a facility may be certified by the survey agency with deficiencies at the standard-level only. (Note: Section 442.110 was previously § 442.111. HSQ-127-F, Correction and Reduction plans for Intermediate Care Facilities for the Mentally Retarded (53 FR 1984) redesignated the section.) We are further revising § 442.101 (d) and (e) to clarify which subparts contained the requirements that each type of facility (that is, SNFs, ICFs and ICFs/MR) must meet.

In many cases, the regulations use the phrase "Federal standards" in a general sense; that is, the phrase refers to both standards and conditions of participation. In order to avoid confusion and to maintain the distinction between standards and conditions of participation, we are changing several of these general references to "requirements". These changes are located at §§ 431.610, 442.13, 442.14, 442.16, and 442.30. We also are deleting the general reference to standards used, and intermediate care facilities for the mentally retarded in § 442.1. That section refers to requirements for facility certification which we believe encompasses facility standards and conditions of participation.

Additionally, throughout the proposed regulation, we included language that stated that "The facility must provide * * *" or "The facility must develop * * *". In this final rule, we have changed that language in many instances to "Each client must receive * * *". We believe that this change clarifies our intent to emphasize client needs.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result.

While we believe that the regulations will accomplish these results, for several reasons we are not able to state the economic impact in quantitative terms. First, current cost reporting requirements do not provide data broken down by cost centers that would allow us to determine the impact of either our present or future health and safety requirements on facility expenditures. Second, ascribing cost of care is difficult because of the variations among facilities in terms of facility size and type, and diversity in per diem rates within a State. Third, the variety of client characteristics makes it difficult to ascribe costs of care based on these characteristics.

Nonetheless, we have found no available data or analyses that indicate that these changes would have an annual economic impact of $100 million, or meet the other thresholds specified in the Executive Order. For these reasons, we have determined that a regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

1. Introduction

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ICFs/MR as small entities. Because many facilities may be significantly affected by these final regulations, we have prepared the following regulatory flexibility analysis.

2. Affected Entities

As of December 1986, there were about 3,660 certified ICFs/MR ranging in size from four to approximately 1500 beds, as follows:

Number of beds	Number of ICFs/MR	Percent of total
4 to 15	2,785	76
16 to 100	754	21
Over 100	121	3
Total	3,660	100

Nonprofit ICFs/MR comprise about 54 percent of certified ICFs/MR, for-profit facilities about 23 percent, and governmental facilities about 24 percent.

We expect restructuring of the requirements in this regulation will have a substantial effect on facility performance. These revised regulations de-emphasize paper work and focus on the active treatment of clients. Initially, facilities may experience more deficiency findings from surveys. However, we do not expect more terminations to result because we expect facility performance to change in ways that would improve compliance and quality of care.

Although we anticipate significant changes on the part of facilities as they focus more on the provision of active treatment to clients, we do not expect a substantial increase in their costs. By publishing these rules, we are giving facilities both the notice and the incentive to refocus their attention. Under these provisions, as under the existing rules and survey protocols, deficiencies will commonly result in plans of correction that afford an adequate opportunity for facilities to come into compliance. The new rules will create the opportunity and the incentive for facilities to reallocate their resources more efficiently and effectively, thus increasing emphasis on the provision of active treatment.

We believe that affected facilities will benefit by the new conditions of participation because of the reduced paperwork burdens and costs, and increased administrative flexibility. While some paperwork is legally and programmatically necessary and important, much of it is performed only to meet specific and discrete requirements specified in current regulations. The final regulations' emphasis on staff and client performance, rather than paper compliance, could reduce the production of paper significantly in some of the large public facilities. However, State licensing requirements and internal facility policies and practices, by retaining some of the same requirements, may also affect the extent to which potential savings are realized under these conditions.

There is an established trend to smaller ICFs (that is, facilities with fewer than 16 beds). These regulations afford these facilities the flexibility they need to operate more effectively. While these facilities will benefit from reduced paperwork and increased focus on client outcomes, because of their size they typically experience fewer of the administrative and programmatic problems in delivering and accounting for services to clients which result from the prescriptive, generally inflexible standards contained in the current regulations.

Specific provisions of this regulation which may significantly affect individual facilities include:

(a) Physician services—To the extent allowed by State law, physician assistants (PAs) and nurse practitioners (NPs) may perform physician functions. This provision could result in significant savings for those facilities that can use PAs and NPs for routine health care.

(b) Nursing personnel—Those facilities that serve 16 or fewer persons and that do not now require professional nursing services will be required to arrange for nursing personnel to conduct an in-person health review of each client at least quarterly. This may represent an increased cost over present requirements for affected facilities because we cannot calculate the expected offset in savings that will occur under these conditions. However, this requirement will be balanced by a decrease in costs because facilities that serve 16 or more clients, none of whom have a medical care plan ordered by a physician, will not need a licensed nurse on duty.

(c) Dental services—The new provisions make explicit that which was always intended; that is, comprehensive

dental treatment including emergency care and annual check-ups are required. Some facilities may experience a cost increase, depending on the extent to which they have met the existing standards.

(d) Client bedrooms (floor to ceiling walls)—For facilities initially certified, or in buildings constructed or with major renovations or conversions on or after October 3, 1988, walls must extend from the floor to the ceiling between living quarters. Clients benefit by increased privacy and a slight degree of increased safety by the containment of possible spreading fires. Since this provision reflects state-of-the-art design and construction practices, we expect the economic impact of this requirement on new facilities planning to come into the program to be negligible. Very few new facilities planning to come into the program would not already meet this requirement. Although the requirement for floor to ceiling walls would have an economic impact on facilities undergoing major renovation or conversion, we do not anticipate that many facilities will be affected due to the trend toward smaller facilities.

(e) Client bedrooms (variance to the four-to-a-bedroom rule)—This regulation limits the conditions under which a facility can claim variance to the rule that no more than four persons may be allowed per bedroom. Only physicians may order this arrangement for clients with severe health problems that require continuous monitoring during sleeping hours. For those facilities that have relied on this variance in existing standards, this provision may represent significant increased capital expenditures. Alternatively, facilities (or buildings) affected could face the loss of certification in the ICF/MR program.

(f) Laboratory services—These final regulations will require that ICFs/MR that choose to provide directly inhouse laboratory services must now meet the requirements of § 483.460(n). We had stated in the NPRM that we had identified 110 public ICFs/MR that used inhouse labs and that would be affected by this provision. A more recent survey showed 80 ICFs/MR that operate their own labs. We believe the difference may be because separate labs in other than ICFs/MR were not included in the more recent survey. We are unable to determine the economic impact upon these ICFs/MR because these labs have not been surveyed previously and we do not know to what extent they would meet the requirements of these final rules. However, we believe that any impact upon the ICFs/MR resulting from an attempt to meet these requirements would be offset by increased accuracy of testing and quality of care received by the facility's clients.

(g) Use of interdisciplinary team—We expect that provisions specifying an interdisciplinary team to coordinate and establish one plan of treatment per client will result in increased quality of care and reduced administrative burden.

3. Effect on Clients

We expect that clients will benefit by better quality of care, by more attention to clients' rights, and by more opportunity for self determination. The net result of these revised regulations will be to focus much more attention on the active treatment of individual clients. Instead of multiple treatment plans developed and implemented by different disciplines, there will be a single treatment plan coordinated and integrated by one interdisciplinary team. The individual treatment plan will establish client objectives and set priorities for those objectives into a meaningful progression of treatment activities and programs with a single professional, the qualified mental retardation professional directly furnishing services for the facility, in charge. Client rights have been made more explicit by clearly stating in positive language the rights that each client has and by establishing explicit standards for staff treatment of clients that reaffirm each of these clients' rights.

C. Conclusion

The actual impact on an individual ICF/MR would represent the extent of the incremental difference between a facility's current level of compliance with our regulations and the effort and cost, if any, required to meet these revisions. Overall, we believe that most facilities will be able to improve performance at lower cost and will have greater flexibility to administer their programs. As explained above, smaller facilities already have substantial flexibility, so that the net gain is not expected to be substantial for most of these facilities. Nonetheless, we expect that the quality of care in smaller facilities will be enhanced.

VI. Paperwork Burden

Sections 483.410 (c) and (d); 483.420(d); 483.440 (b) through (f); 483.450 (a) and (b); 483.460 (a), (b), (c), (e), (f), (h), (j), (k) and (l) and, 483.470 (b), (h), (i) and (l) of this final rule contain information collection requirements. The public is not required to comply with the information collection requirements until the Executive Office of Management and Budget approves these requirements under Section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). A notice will be published in the Federal Register when approval is obtained.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV is amended as set forth below:

A. The table of contents for Chapter IV, Subchapter E is amended by adding a new Part 483 to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

SUBCHAPTER E—STANDARDS AND CERTIFICATION

Part

* * * * *

483 Conditions of participation for long term care facilities

* * * * *

PART 431—STATES ORGANIZATION AND GENERAL ADMINISTRATION

B. Part 431 is amended as follows:

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

§ 431.610 [Amended]

2. In § 431.610(f)(1), remove the word "standards" and add in its place the word "requirements".

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

C. Part 435 is amended as follows:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.1009, the introductory language is republished and the definition of "Active treatment in institutions for the mentally retarded" is revised as follows:

§ 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

"Active treatment in intermediate care facilities for the mentally retarded" means treatment that meets the requirements specified in the standard concerning active treatment for intermediate care facilities for persons with mental retardation under § 483.440(a) of this subchapter.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

D. Part 440 is amended as follows:

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.150 [Amended]

2. Section 440.150(c)(3) is amended by removing the phrase "defined in § 435.1009" and adding in its place the phrase "specified in § 483.440".

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

E. Part 442 is amended as set forth below:

1. In the table of contents, § 442.252 and the entire Subpart G (consisting of §§ 442.400—442.516) are removed; and, the titles of §§ 442.105 and 442.110, and the authority citation for Part 442 are revised to read as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Sec.

* * * * *

442.105 Certification with standard-level deficiencies: General provisions.

* * * * *

442.110 Certification period: Facilities with standard-level deficiencies.

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 442.1(a), the first sentence is revised to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements and facility certification relating to the provision of services furnished by skilled nursing facilities and intermediate care facilities to Medicaid recipients. * * *

* * * * *

3. In § 442.13(b)(1), remove the word "standards" and add in its place the word "requirements", and revise paragraph (c) to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(c) *All Federal requirements are not met on the date of the survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements.

(2) The date on which the provider is found to meet all applicable conditions of participation and submits a correction plan for other deficiencies to the State survey agency or an approvable waiver request, or both.

§ 442.14 [Amended]

4. Section 442.14(b)(3) is amended by removing the word "standards" and adding in its place the word "requirements".

§ 442.16 [Amended]

5. Section 442.16(b) is amended by removing the word "standards" and adding in its place the word "requirements".

6. In § 442.30(a), the introductory language is republished and paragraphs (a)(1) and (4) are revised to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

(1) The survey agency failed to apply the applicable certification requirements under Subpart D, E, or F of this part or Subpart D of Part 483, which sets forth the conditions of participation for ICFs/MR;

* * * * *

(4) The survey agency failed to use the Federal requirements and the forms, methods and procedures prescribed by HCFA in current general instructions, as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

* * * * *

7. Section 442.100 is revised to read as follows:

§ 442.100 State plan requirements.

A State plan must provide that the requirements of this subpart and Part 483 are met.

8. In § 442.101, paragraphs (d) and (e) are revised to read as follows:

§ 442.101 Obtaining certification.

* * * * *

(d) The notice must indicate that one of the following provisions pertains to the facility:

(1) The facility meets the applicable requirements:

(i) A SNF meets the requirements in Subpart D of this part and each of the conditions of participation in Part 405, Subpart K of this chapter.

(ii) A ICF meets the requirements in Subparts E and F of this part.

(iii) A ICF/MR meets the requirements of Subpart E of this part and each of the conditions of participation in Part 483, Subpart D of this chapter.

(2) The facility is considered to meet applicable requirements based on waivers or variances granted by HCFA or survey agency if such waivers or variances are allowed under the applicable subpart.

(3) The facility has been certified with deficiencies in accordance with the following:

(i) An ICF has been certified if deficiencies are covered by an acceptable plan of correction.

(ii) An SNF or ICF/MR has been certified with standard-level deficiencies if—

(A) All conditions of participation are found met; and

(B) The facility submits an acceptable plan of correction covering the remaining deficiencies, subject to other limitations specified in § 442.105.

(e) For SNFs and ICFs/MR, the failure to meet one or more of the applicable conditions of participation is cause for termination or non-renewal of the provider agreement.

9. Section 442.105 is amended by revising the title and the introductory paragraph to read as follows:

§ 442.105 Certification with standard-level deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards specified under Subpart D, E or F of this part or under Subpart D of Part 483, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

10. Section 442.110 is amended by revising the title to read as follows:

§ 442.110 Certification period: Facilities with standard-level deficiencies.

11. In § 442.117(a), the introductory paragraph is republished and paragraph (a)(1) is revised to read as follows:

§ 442.117 Termination of certification facilities whose deficiencies pose immediate jeopardy.

(a) A survey agency must terminate a facility's certification if it determines that—

(1) The facility no longer meets applicable conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs) specified under Subpart D, E, and F of this part or Part 483, Subpart D of this chapter; and

* * * * *

§ 442.118 [Amended]

12. In § 442.118, paragraph (b)(1) is amended by adding the phrase "ICFs/MR" after "SNFs", and paragraph (b)(3)(i) is amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR or standards (for ICFs)."

§ 442.119 [Amended]

13. In § 442.119, paragraphs (a)(1) and (b)(1) are amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" and adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs)".

§ 442.252 [Removed]

14. Subpart E is amended by removing § 442.252.

15. Section 442.254(b) is revised to read as follows:

§ 442.254 Standards for hospitals and SNF's providing ICF services.

* * * * *

(b) If a hospital or SNF participating in Medicare or Medicaid is also a provider of ICF/MR services, it must meet each of the conditions of participation specified in Part 483, Subpart D of this chapter.

§§ 442.400–442.516 [Removed]

16. Subpart G, (Consisting of §§ 442.400–442.516) is removed.

F. A new Part 483 is added to Subchapter E to read as follows:

PART 483—CONDITIONS OF PARTICIPATION FOR LONG TERM CARE FACILITIES

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

Sec.

483.400 Basis and purpose.
483.405 Relationship to other HHS regulations.
483.410 Condition of participation: Governing body and management.
483.420 Condition of participation: Client protections.
483.430 Condition of participation: Facility staffing.
483.440 Condition of participation: Active treatment services.
483.450 Condition of participation: Client behavior and facility practices.
483.460 Condition of participation: Health care services.
483.470 Condition of participation: Physical environment.
483.480 Condition of participation: Dietetic services.

Authority: Secs. 1102, 1905(c) and (d) of the Social Security Act (42 U.S.C 1302, 1396d(c) and (d)).

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

§ 483.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe regulations for intermediate care facility services in facilities for the mentally retarded or persons with related conditions.

§ 483.405 Relationship to other HHS regulations.

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR Part 80), nondiscrimination on the basis of handicap (45 CFR Part 84), nondiscrimination on the basis of age (45 CFR Part 91), protection of human subjects of research (45 CFR Part 46), and fraud and abuse (42 CFR Part 455). Although these regulations are not in themselves considered conditions of participation under this Part, their violation may result in the termination or suspension of, or the refusal to grant or continue, Federal financial assistance.

§ 483.410 Condition of participation: Governing body and management.

(a) *Standard: Governing body.*

The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must—

(1) Exercise general policy, budget, and operating direction over the facility;

(2) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility; and

(3) Appoint the administrator of the facility.

(b) *Standard: Compliance with Federal, State, and local laws.*

The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, and sanitation.

(2) *Standard: Client records.*

(1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

(d) *Standard: Services provided under agreements with outside sources.*

(1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in § 483.470 (a) through (g), (j) and (k).

§ 483.420 Condition of participation: Client protections.

(a) *Standard: Protection of clients' rights.* The facility must ensure the rights of all clients. Therefore, the facility must—

(1) Inform each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility;

(2) Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process;

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(5) Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail;

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(11) Ensure clients the opportunity to participate in social, religious, and community group activities;

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(13) Permit a husband and wife who both reside in the facility to share a room.

(b) *Standard: Client finances.* (1) The facility must establish and maintain a system that—

(i) Assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients; and

(ii) Precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.

(c) *Standard: Communication with clients, parents, and guardians.* The facility must—

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(2) Answer communications from clients' families and friends promptly and appropriately;

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(6) Notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(d) *Standard: Staff treatment of clients.* (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

(i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

§ 483.430 Condition of participation: Facility staffing.

(a) *Standard: Qualified mental retardation professional.* Each client's active treatment program must be integrated, coordinated and monitored by a qualified mental retardation professional who—

(1) Has at least one year of experience working directly with persons with mental retardation or other developmental disabilities; and

(2) Is one of the following:

(i) A doctor of medicine or osteopathy.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category specified in paragraph (b)(5) of this section.

(b) *Standard: Professional program services.*—(1) Each client must receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff must work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(2) The facility must have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance

with the stated goals and objectives of every individual program plan.

(3) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff must be licensed, certified, or registered, as applicable, to provide professional services by the State in which he or she practices. Those professional program staff who do not fall under the jurisdiction of State licensure, certification, or registration requirements, specified in § 483.410(b), must meet the following qualifications:

(i) To be designated as an occupational therapist, an individual must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

(ii) To be designated as an occupational therapy assistant, an individual must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

(iii) To be designated as a physical therapist, an individual must be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

(iv) To be designated as a physical therapy assistant, an individual must be eligible for registration by the American Physical Therapy Association or be a graduate of a two year college-level program approved by the American Physical Therapy Association or another comparable body.

(v) To be designated as a psychologist, an individual must have at least a master's degree in psychology from an accredited school.

(vi) To be designated as a social worker, an individual must—

(A) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(B) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

(vii) To be designated as a speech-language pathologist or audiologist, an individual must—

(A) Be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language-Hearing Association or another comparable body; or

(B) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(viii) To be designed as a professional recreation staff member an individual must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

(ix) To be designated as a professional dietitian, an individual must be eligible for registration by the American Dietetics Association.

(x) To be designated as a human services professional an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).

(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5) (i) through (x) of this section are not required—

(A) Except for qualified mental retardation professionals;

(B) Except for the requirements of paragraph (b)(2) of this section concerning the facility's provision of enough qualified professional program staff; and

(C) Unless otherwise specified by State licensure and certification requirements.

(c) *Standard: Facility staffing.* (1) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing—

(i) Clients for whom a physician has ordered a medical care plan;

(ii) Clients who are aggressive, assaultive or security risks;

(iii) More than 16 clients; or

(iv) Fewer than 16 clients within a multi-unit building.

(3) There must be a responsible direct care staff person on duty on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing—

(i) Clients form whom a physician has not ordered a medical care plan;

(ii) Clients who are not aggressive, assaultive or security risks; and

(iii) Sixteen or fewer clients.

(4) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(d) *Standard: Direct care (residential living unit) staff.* (1) The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(ii) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(iii) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(4) When there are no clients present in the living unit, a responsible staff member must be available by telephone.

(e) *Standard: Staff training program.* (1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

§ 483.440 Condition of participation: Active treatment services.

(a) *Standard: Active treatment.* (1) Each client must receive a continuous active treatment program, which includes aggressive, consistent

implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward—

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) *Standard: Admissions, transfers, and discharge.* (1) Clients who are admitted by the facility must be in need of and receiving active treatment services.

(2) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation must contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility must—

(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must—

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

(c) *Standard: Individual program plan.* (1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to—

(i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and

(ii) Designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and must—

(i) Identify the presenting problems and disabilities and where possible, their causes;

(ii) Identify the client's specific developmental strengths;

(iii) Identify the client's specific developmental and behavioral management needs;

(iv) Identify the client's need for services without regard to the actual availability of the services needed; and

(v) Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section, and the planned sequence for dealing with those objectives. These objectives must—

(i) Be stated separately, in terms of a single behavioral outcome;

(ii) Be assigned projected completion dates;

(iii) Be expressed in behavioral terms that provide measurable indices of performance;

(iv) Be organized to reflect a developmental progression appropriate to the individual; and

(v) Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan must specify:

(i) The methods to be used;

(ii) The schedule for use of the method;

(iii) The person responsible for the program;

(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) The inappropriate client behavior(s), if applicable; and

(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan must also:

(i) Describe relevant interventions to support the individual toward independence.

(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.

(iii) Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

(v) Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(iv) Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan must be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

(d) *Standard: Program implementation.* (1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility must develop an active treatment schedule that outlines the

current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

(e) *Standard: Program documentation.* (1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measureable terms.

(2) The facility must document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(f) *Standard: Program monitoring and change.* (1) The individual program plan must be reviewed at least by the qualified mental retardation professional and revised as necessary, including, but not limited to situations in which the client—

(i) Has successfully completed an objective or objectives identified in the individual program plan;

(ii) Is regressing or losing skills already gained;

(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(iv) Is being considered for training towards new objectives.

(2) At least annually, the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to—

(i) Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(ii) Insure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian; and

(iii) Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.

§ 483.450 Condition of participation: Client behavior and facility practices.

(a) *Standard: Facility practices—Conduct toward clients.* (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures must—

(i) Promote the growth, development and independence of the client;

(ii) Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(iii) Specify client conduct to be allowed or not allowed; and

(iv) Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients must participate in the formulation of these policies and procedures.

(3) Clients must not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(b) *Standard: Management of inappropriate client behavior.* (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures must be consistent with the provisions of paragraph (a) of this section. These procedures must—

(i) Specify all facility approved interventions to manage inappropriate client behavior;

(ii) Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(iii) Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(iv) Address the following:

(A) The use of time-out rooms.

(B) The use of physical restraints.

(C) The use of drugs to manage inappropriate behavior.

(D) The application of painful or noxious stimuli.

(E) The staff members who may authorize the use of specified interventions.

(F) A mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual program plan, in accordance with § 483.440(c) (4) and (5) of this subpart.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

(c) *Standard: Time-out rooms.* (1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(i) The placement is a part of an approved systematic time-out program as required by paragraph (b) of this section. (Thus, emergency placement of a client into a time-out room is not allowed.)

(ii) The client is under the direct constant visual supervision of designated staff.

(iii) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(2) Placement of a client in a time-out room must not exceed one hour.

(3) Clients placed in time-out rooms must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of time-out activities must be kept.

(d) *Standard: Physical restraints.* (1) The facility may employ physical restraint only—

(i) As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(ii) As an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(iii) As a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency must be:

(i) In effect no longer than 12 consecutive hours; and

(ii) Obtained as soon as the client is restrained or stable.

(3) The facility must not issue orders for restraint on a standing or as needed basis.

(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(5) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(7) Barred enclosures must not be more than three feet in height and must not have tops.

(e) *Standard: Drug usage.* (1) The facility must not use drugs in doses that interfere with the individual client's daily living activities.

(2) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(3) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(4) Drugs used for control of inappropriate behavior must be—

(i) Monitored closely, in conjunction with the physician and the drug regimen review requirement at § 483.460(j), for desired responses and adverse consequences by facility staff; and

(ii) Gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

§ 483.460 Condition of participation: Health care services.

(a) *Standard: Physician services.*

(1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan must be integrated in the individual program plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(i) Evaluation of vision and hearing.

(ii) Immunizations, using as a guide the recommendations of the Public Health Service Advisory Commitee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(iii) Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

(iv) Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

(b) *Standard: Physician participation in the individual program plan.* A physician must participate in—

(1) The establishment of each newly admitted client's initial individual program plan as required by § 456.380 of this chapter that specified plan of care requirements for ICFs; and

(2) If appropriate, physicians must participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(c) *Standard: Nursing services.* The facility must provide clients with nursing services in accordance with their needs. These services must include—

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(3) For those clients certified as not needing a medical care plan, a review of their health status which must—

(i) Be by a direct physical examination;

(ii) Be by a licensed nurse;

(iii) Be on a quarterly or more frequent basis depending on client need;

(iv) Be recorded in the client's record; and

(v) Result in any necessary action (including referral to a physician to address client health problems).

(4) Other nursing care as prescribed by the physician or as identified by client needs; and

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(i) Training clients and staff as needed in appropriate health and hygiene methods;

(ii) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(iii) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(d) *Standard: Nursing staff.* (1) Nurses providing services in the facility must have a current license to practice in the State.

(2) The facility must employ or arrange for licensed nursing services sufficient to care for clients health needs including those clients with medical care plans.

(3) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or onsite consultation to the licensed practical or vocational nurse.

(5) Non-licensed nursing personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

(e) *Standard: Dental services.* (1) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental

hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate dental professionals must participate, in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(f) *Standard: Comprehensive dental diagnostic services.* Comprehensive dental diagnostic services include—

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within twelve months before admission);

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(3) A review of the results of examination and entry of the results in the client's dental record.

(g) *Standard: Comprehensive dental treatment* The facility must ensure comprehensive dental treatment services that include—

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(2) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(h) *Standard: Documentation of dental services.* (1) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

(i) *Standard: Pharmacy services.* The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy

(j) *Standard: Drug regimen review.* (1) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly.

(2) The pharmacist must report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist must prepare a record of each client's drug regimen reviews and the facility must maintain that record.

(4) An individual medication administration record must be maintained for each client.

(5) As appropriate the pharmacist must participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

(k) *Standard: Drug administration.* The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(1) All drugs are administered in compliance with the physician's orders;

(2) All drugs, including those that are self-administered, are administered without error;

(3) Unlicensed personnel are allowed to administer drugs only if State law permits;

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(6) No client self-administers medications until he or she demonstrates the competency to do so;

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law; and

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(l) *Standard: Drug storage and recordkeeping.* (1) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self administer drugs in accordance with § 483.460(k)(4) may have access to keys to their individual drug supply.

(3) The facility must maintain records of the receipt and disposition of all controlled drugs.

(4) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*, as implemented by 21 CFR Part 308).

(5) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs.

(m) *Standard: Drug labeling.* (1) Labeling of drugs and biologicals must—

(i) Be based on currently accepted professional principles and practices; and

(ii) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility must remove from use—

(i) Outdated drugs; and

(ii) Drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.

(n) *Standard: Laboratory services.* (1) For purposes of this section, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory must—

(i) Meet the management requirements specified in § 405.1316 of this chapter; and

(ii) Provide personnel to direct and conduct the laboratory services.

(A) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must meet licensing or other qualification standards established by the State with respect to directors of clinical laboratories. For those States that do not have licensure or qualification requirements pertaining to directors of clinical laboratories, the director must be either—

(*1*) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(*2*) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(B) The laboratory director must provide adequate technical supervision

of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(C) The laboratory director must ensure that the staff—

(*1*) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(*2*) Is sufficient in number for the scope and complexity of the services provided; and

(*3*) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(D) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory must meet the proficiency testing requirements specified in § 405.1314(a) of this chapter.

(4) The laboratory must meet the quality control requirements specified in § 405.1317 of this chapter.

(5) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved by the Medicare program either as a hospital or an independent laboratory.

§ 483.470 Condition of participation: Physical environment.

(a) *Standard: Client living environment.* (1) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility must not segregate clients solely on the basis of their physical disabilities. It must integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders, etc., with others of comparable social and intellectual development.

(b) *Standard: Client bedrooms.* (1) Bedrooms must—

(i) Be rooms that have at least one outside wall;

(ii) Be equipped with or located near toilet and bathing facilities;

(iii) Accommodate no more than four clients unless granted a variance under paragraph (b)(3) of this section;

(iv) Measure at least 60 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(v) In all facilities initially certified, or in buildings constructed or with major renovations or conversions on or after [*the effective date of these regulations*], have walls that extend from floor to ceiling.

(2) If a bedroom is below grade level, it must have a window that—

(i) Is usable as a second means of escape by the client(s) occupying the room; and

(ii) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(3) The survey agency may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified mental retardation professional—

(i) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) Documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

(4) The facility must provide each client with—

(i) A separate bed of proper size and height for the convenience of the client;

(ii) A clean, comfortable, mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the client's needs, and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.

(c) *Standard: Storage space in bedroom.* The facility must provide—

(1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety; and

(2) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(d) *Standard: Client bathrooms.* The facility must—

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(2) Provide for individual privacy in toilets, bathtubs, and showers; and

(3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110° Fahrenheit.

(e) *Standard: Heating and ventilation.* (1) Each client bedroom in the facility must have—

(i) At least one window to the outside; and

(ii) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(2) The facility must—

(i) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(ii) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

(f) *Standard: Floors.* The facility must have—

(1) Floors that have a resilient, nonabrasive, and slip-resistant surface;

(2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(3) Exposed floor surfaces and floor coverings that promote mobility in areas used by clients, and promote maintenance of sanitary conditions.

(g) *Standard: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by this subpart and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

(h) *Standard: Emergency plan and procedures.* (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(2) The facility must communicate, periodically review, make the plan available, and provide training to the staff.

(i) *Standard: Evacuation drills.* (1) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(i) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(ii) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(iii) Evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility must—

(i) Actually evacuate clients during at least one drill each year on each shift;

(ii) Make special provisions for the evacuation of clients with physical disabilities;

(iii) File a report and evaluation on each evacuation drill;

(iv) Investigate all problems with evacuation drills, including accidents, and take corrective action; and

(v) During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities must meet the requirements of paragraphs (i)(1) and (2) of this section for any live-in and relief staff they utilize.

(j) *Standard: Fire protection.* (1) *General.* (i) Except as specified in paragraph (j)(2) of this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 1985 edition, which is incorporated by reference.[2]

(ii) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(iii) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds, must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(2) *Exceptions.* (i) For facilities that meet the LSC definition of a health care occupancy:

(A) The State survey agency may waive, for a period it considers appropriate, specific provisions of the LSC if—

(*1*) The waiver would not adversely affect the health and safety of the clients; and

(*2*) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(B) The State survey agency may apply the State's fire and safety code instead of the LSC if the Secretary finds that the State has a code imposed by State law that adequately protects a facility's clients.

(C) Compliance on November 26, 1982 with the 1967 edition of the LSC or compliance on April 18, 1986 with the 1981 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

(ii) For facilities that meet the LSC definition of a residential board and care occupancy and that have more than 16 beds, the State survey agency may apply the State's fire and safety code as specified in paragraph (j)(2)(B) of this section.

(k) *Standard: Paint.* The facility must—

(1) Use lead-free paint inside the facility; and

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

(l) *Standard: Infection control.*

(1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

§ 483.480 Condition of participation: Dietetic services.

(a) *Standard: Food and nutrition services.*

(1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(b) *Standard: Meal services.* (1) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(i) Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(ii) Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under paragraph (b)(1)(i) of this section.

(2) Food must be served—

(i) In appropriate quantity;

(ii) At appropriate temperature;

(iii) In a form consistent with the developmental level of the client; and

(iv) With appropriate utensils.

(3) Food served to clients individually and uneaten must be discarded.

(c) *Standard: Menus.* (1) Menus must—

(i) Be prepared in advance;

(ii) Provide a variety of foods at each meal;

(iii) Be different for the same days of each week and adjusted for seasonal changes; and

(iv) Include the average portion sizes for menu items.

(2) Menus for food actually served must be kept on file for 30 days.

(d) *Standard: Dining areas and service.*

The facility must—

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

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[2] Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA 101) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02269.

If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs;

(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level: and

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: September 4, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 31, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-12250 Filed 6-2-88; 8:45 am]

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Friday
June 3, 1988

Part IV

Department of Energy

10 CFR Part 625

Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions; Revised Appendix to Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 625

Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions

AGENCY: Procurement and Assistance Management Directorate, Assistant Secretary for Management and Administration, DOE.

ACTION: Revised appendix to final rule.

SUMMARY: On December 21, 1983, the Department of Energy (DOE) published in the **Federal Register** a final rule governing price competitive sales of petroleum from the Strategic Petroleum Reserve (SPR) in the event that the SPR is drawn down to respond to a severe energy supply interruption or to meet obligations of the United States under the Agreement on an International Energy Program (IEP). This final rule provided for the publication in the **Federal Register**, as an appendix thereto, of Standard Sales Provisions (SSPs) containing or describing contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be applicable to a particular sale of SPR petroleum. On June 16, 1987, draft revisions to the January 20, 1984 interim final SSPs were published in the **Federal Register**. As provided in the rule, DOE is now issuing those revised SSPs for use in an SPR drawdown.

EFFECTIVE DATE: As of June 3, 1988 these SSPs are adopted for use in the price competitive sale of SPR petroleum.

FOR FURTHER INFORMATION CONTACT:
Fred A. Hutchinson, FE-422, Office of Strategic Petroleum Reserve, U.S. Department of Energy, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4734.
E. Grant Garrison, GC-41, Office of Assistant General Counsel, International Affairs, U.S. Department of Energy, Room 6A-167, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.
Robert W. Law, MA-442, Procurement and Assistance Management Directorate, U.S. Department of Energy, Room 1M-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8234.

SUPPLEMENTARY INFORMATION:

I. Background
A. The Strategic Petroleum Reserve Drawdown Plan
B. The Final Rule
C. The Standard Sales Provisions
II. Discussion of Major Comments
A. Comments on the Draft Revised SSPs
B. Comments on SPR Plan Amendment No. 4
III. The Revised Standard Sales Provisions
IV. Procedural Matters
A. Effective Date
B. Paperwork Reduction Act

I. Background

A. The Strategic Petroleum Reserve Drawdown Plan

The Strategic Petroleum Reserve (SPR) was established by the Energy Policy and Conservation Act of 1975 (EPCA, Pub. L. 94-163) to store up to one billion barrels of petroleum to diminish the impact of disruptions on petroleum supplies and to carry out obligations of the United States under the International Energy Program. The EPCA required the preparation of an "SPR Plan" detailing proposals for the development of the SPR; this SPR Plan was to include a Distribution Plan setting forth the methods for drawing down and distributing the SPR in the event of an emergency. The mandated SPR Plan, which was submitted to Congress and subsequently took effect on April 18, 1977, indicated that the Distribution Plan was still being formulated. On October 21, 1979, a detailed Distribution Plan was transmitted to Congress as Amendment No. 3 to the SPR Plan and became effective on November 15, 1979. This Distribution Plan set out a number of alternative distribution methods, ranging from allocation to price competitive sales.

In the Energy Emergency Preparedness Act of 1982 (EEPA), Pub. L. 97-229, Congress required that a new "Drawdown" (Distribution) Plan be transmitted to the Congress. The EEPA provided that this amendment to the SPR Plan would take effect on the date transmitted, without Congressional review. The new Distribution Plan, SPR Plan Amendment No. 4, was transmitted to Congress on December 1, 1982, and took effect on that date. The new Plan provided that the principal method of distributing SPR oil will be price competitive sale.

On March 16, 1983, DOE published a notice of proposed rulemaking (48 FR 11125) to establish a framework for implementing the policies and procedures set out in Amendment No. 4. For a discussion of the statutory authority for the SPR and the regulatory background of the proposed rule, *see* the preamble to the proposed rule at 48 FR 11125.

B. The Final Rule

The purpose of the SPR sales rule (48 FR 56541, December 21, 1983) is to facilitate the sales process during a drawdown of the SPR by providing for the establishment of Standard Sales Provisions (SSPs), containing contract terms and conditions developed in accordance with the rule which, it is expected, will be contained in contracts for the sale of SPR petroleum. The rule calls for the publication of the SSPs in the **Federal Register** and the Code of Federal Regulations as an appendix to the rule. The rule also provides for the periodic review and republication of the SSPs in the **Federal Register**, including any revisions to such provisions.

Upon a Presidential decision to draw down the SPR, DOE would issue a Notice of Sale, announcing the amounts, types, and locations of the SPR petroleum to be sold, the delivery points, and other pertinent information. The rule provides that the Secretary of Energy or his designee would specify in the Notice of Sale, by referencing the **Federal Register** and the Code of Federal Regulations in which the latest version of the SSPs was published, which of the terms and conditions in the SSPs would or would not apply to a particular sale. In the Notice of Sale, the Secretary also could revise such terms and conditions, or add new ones which would apply to that particular sale. The rule provides that no contract could be awarded to an offeror who had not unconditionally agreed to all contractual provisions and responsibility measures made applicable by the Notice of Sale. The rule also provides a mechanism for excluding purchasers that fail to perform their contractual obligations from future participation in SPR sales.

C. The Standard Sales Provisions

1. Publication of the SSPs

As provided in the SPR sales rule, draft SSPs were published on June 15, 1983 (48 FR 27482) for public comment. The draft SSPs underwent significant revision and were adopted as interim final procedures on January 20, 1984 (49 FR 2692); additional public comment was sought on the interim final SSPs. As the result of the public comments on the interim final SSPs, internal DOE exercises, the addition of the ARCO Terminal as a new distribution point for SPR petroleum, the National Petroleum Council (NPC) report to the Secretary of Energy, *The Strategic Petroleum Reserve, A Report on the Capability to Distribute SPR Oil* (December 1984), and the SPR test sale held by DOE from November 1985 to January 1986, on June 16, 1987 (52 FR 22960) DOE published draft revisions to the interim final SSPs for public comment. DOE is now issuing the revised SSPs for use in the event of a drawdown of the SPR.

2. General Sales Objectives

The procedures and provisions contained in the SSPs are designed to balance and achieve two objectives of SPR Plan Amendment No. 4, i.e., to provide that SPR price competitive sales will be open to all interested buyers, but to establish measures to assure purchaser performance under the resulting contracts.

In order to maximize competition by the widest possible universe of offerors, DOE made the SSPs as unrestricted and nonjudgmental as possible. As required by Amendment No. 4, price is to be the determining factor in the award of SPR petroleum sales contracts.

The measures included in the SSPs to ensure the offeror's fulfillment of its responsibilities include:

a. Requirement for offer guarantee;
b. Requirement for letter of credit or cash deposit to guarantee payment and performance;
c. Assessment of liquidated damages for failure to lift oil in accordance with the contract; and
d. Possible termination for default.

An offer or contract to acquire SPR oil thus would involve a substantial commitment to the implementation of SPR drawdown and distribution in a manner consistent with the purposes of the SPR. For a more complete discussion of the responsibility measures, *see* the preamble to the interim final SSPs at 49 FR 2693-94.

3. General Sales Procedures

The SPR sales process starts with the issuance of a Notice of Sale which would indicate the amount, characteristics and location of the petroleum being sold, the delivery dates and the procedures for submitting offers, as well as providing other information pertinent to a particular sale; in addition, it would specify what contractual provisions and performance and financial responsibility measures are applicable.

Over the course of an SPR drawdown, a number of Notices of Sale may be issued, each covering a sales period of 1 to 2 months. Initially, Notices of Sale issued during SPR drawdown could allow an extremely short lead time for offers and deliveries. It is contemplated that offerors might be given as little as 7 days from the issuance of the Notice of Sale until offers are due, and as little as 30 days from the time of such issuance until oil delivery starts, with a less compressed schedule becoming more feasible after the initial stages of drawdown. Because of the possible short lead time, the SSPs provide for the establishment of a list of prospective offerors, to whom the Government would furnish copies of all Notices of Sale.

The next step in the sales process is the preparation by prospective purchasers of their offers, which must be submitted before a time specified in the Notice of Sale. The SSPs require that the offeror: unconditionally accept all terms and conditions made applicable to that sale by the Notice of Sale; include an offer guarantee; and offer at least the minimum price, if any, specified in the Notice of Sale.

Following the receipt of offers, the Government would evaluate the offers to select the "apparently successful" offerors. The evaluation process is structured so that the highest offerors could select the method by which the SPR petroleum is to be transported, up to the limits of the SPR distribution systems. Specific delivery arrangements are to be negotiated later.

Under the SSPs, all apparently successful offerors would be required, within as little as 5 days, to provide a letter of credit or a cash deposit as a guarantee of performance and of payment of amounts due under the contract. Upon timely receipt of the guarantee, and upon a final determination by the Contracting Officer that the offer is responsive and the offeror responsible, the Government would issue the Notice of Acceptance.

The only other bases in the SSPs upon which the Contracting Officer could make a finding of nonresponsibility, other than nonperforming purchasers that had been excluded from SPR sales under the procedures established by the sales rule, are: (i) the offeror is on either DOE's or the Federal Government's list of debarred, ineligible, and suspended bidders; (ii) evidence of an offeror's conduct or activity which represents a violation of law or regulation, or Executive Order having the force and effect of law; or (iii) evidence which shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, and which would substantially diminish the Contracting Officer's confidence in the offeror's performance.

II. Discussion of Major Comments

A. Comments on the Draft Revised SSPs

In response to the request for comments on the draft revisions to the SSPs, five sets of comments were received, four from refiners and one from an oil industry trade association. In general, all five commenters favored the revisions, stating that the revised provisions now conform more closely with standard industry practices. However, the five did propose additional changes.

The proposed revisions limited the circumstances in which a purchaser that failed to perform in accordance with the terms of the contract would be liable for liquidated damages. No. C.29 assesses liquidated damages of one percent per day for each day of delay in taking delivery of SPR oil up to a maximum assessment of 30 percent. The proposed revisions would not assess liquidated damages until three days after the end of the scheduled loading window and would excuse purchasers for nonperformance by transportation subcontractors provided that the subcontractor is not an affiliate and the services could not be obtained in a timely fashion from other sources. Three commenters objected that even with the changes, the liquidated damages were an unreasonable burden on the purchaser. DOE disagrees. A purchaser's failure to honor an SPR petroleum sales contract could hinder attainment of the desired drawdown rate, with possible adverse effects on the Nation. The liquidated damages are compensation for the damages incurred by the country when a buyer fails to comply with the contractually agreed delivery schedule. Therefore, the revised SSPs continue to assess liquidated damages for unexcused delays in accepting delivery of the petroleum. One commenter suggested that the relief from liability for the failure of non-affiliated transportation subcontractors to perform be extended to apply to affiliated subcontractors. The relief was proposed because DOE had determined that the actions of non-affiliated transportation subcontractors are likely to be beyond the control of the purchasers of SPR oil; such would not be the case with affiliated transportation firms.

Four commenters expressed concern relating to Jones Act waivers. Two commenters recommended that, if no waiver is granted, an offeror should be allowed to withdraw his offer without penalty if it can be shown that the purchaser made a good faith effort to charter a coastwise-qualified vessel. Two commenters recommended that the time period in which vessels could be initially nominated or substitute vessels be named be extended to allow for a decision on a Jones Act waiver request. The Notice of Sale will announce any general waiver of the Jones Act. The case-by-case Jones Act waiver procedures which DOE has developed with the Maritime Administration and the U.S. Customs Service provide for a response to a waiver request in two

days. Therefore, DOE believes that there will be sufficient time to obtain vessels to transport the oil and that further exculpatory provisions are not required.

Three commenters suggested that the proposed new provision on demurrage excluded too many events from the calculation of laytime and demurrage. There is no standard industry practice with respect to how to calculate laytime and time on demurrage. DOE, after review of several commercial charter parties, believes that the Government's liability under these SSPs falls within the range of commercial practice.

Two commenters suggested that a system similar to that used to designate categories of petroleum for "Superfund" tax purposes be used to designate petroleum as belonging to various categories, e.g., Naval Petroleum Reserve crude oil or Alaskan North Slope crude oil, to assist in determining which export restrictions are applicable to crude oil delivered to a particular buyer. Enforcement of the export control laws is the responsibility of the Department of Commerce, beyond the scope of these SSPs, and therefore no such categorical designations will be made by DOE.

One commenter suggested that, to conform more closely with commercial terms, DOE should be liable for the purchaser's cost in preparing to perform the contract should the Government terminate the contract for its convenience due to a sovereign decision of the United States, such as a Presidential decision to terminate the drawdown. However, it is a long-established principle of Government contracting that the Government is not liable under its contracts for its sovereign decisions impacting those contracts.

One commenter suggested that notwithstanding the procedures for giving preference to the scheduling requests of offerors with the highest priced offers, exceptions to that system should be allowed in unique situations when it is in the best interest of DOE, or the purchaser, such as a refinery that is about to run out of petroleum. DOE agrees that scheduling flexibility is desirable; SSP No. C.5(c), which allows purchasers to schedule deliveries prior to the start of the contract delivery period on a first-come, first served basis unless unacceptable costs would be incurred or schedules disrupted, should accommodate most of these unique situations.

One commenter was concerned that a purchaser would be required to accept oil tendered for delivery regardless of characteristics, and which might be hazardous to load or transport. As the specifications in the Exhibits to the SSPS make clear, the petroleum now in storage in the SPR contains no such hazards and DOE's purchase specifications and quality assurance procedures would preclude such crude oil from being acquired. As the petroleum is delivered directly to the purchaser without being commingled with other crude oil streams, the delivery of unsuitable petroleum to a purchaser is improbable.

One commenter suggested that the amount of time during which an offer must remain valid should be reduced from 10 days to 3 days after the date offers are due. DOE disagrees. Offers must remain valid long enough for DOE to evaluate them, notify the apparently successful offerors, receive the payment and performance guarantees (generally 5 days will be allowed to furnish the guarantees) and to notify the next winning offeror if any apparently successful offeror defaults. Three days are insufficient to accomplish these events.

One commenter was concerned that the two business days deemed for receipt of a mailed notification from DOE are inadequate. DOE believes, however, that given the availability of overnight mail services and telex communication, two business days are adequate. The Contracting Officer may extend that period in individual cases.

Finally, one commenter suggested several clarifying definitions and citations relating to quantity and quality measurement standards, most of which have been incorporated into the text of provisions C.15 and C.16.

B. Comments on SPR Plan Amendment No. 4

Three comments were received which suggested that sales be restricted to U.S. domestic refiners, their purchasing agents, and other traditional suppliers so that the sales procedures could be streamlined to accepted commercial terms.

Section 161(c) of the Energy Policy and Conservation Act explicitly provides that drawdown and distribution must be in accordance with the SPR Plan in effect at that time. Consequently, DOE cannot adopt any SSPs that are inconsistent with SPR Plan Amendment No. 4, which provides that "all interested buyers will be eligible to bid for and purchase SPR oil ...."

III. The Revised Standard Sales Provisions

No substantive changes have been made to the draft revised SSPs published in the **Federal Register** on June 16, 1987. For a discussion of the major changes to the interim final SSPs proposed by the draft revisions, *see* 54 FR 22960.

Several of the draft revised SSPs, however, have been slightly revised to clarify meaning, correct citations, or give additional factual or procedural information. There follows a provision-by-provision discussion of the noteworthy revisions.

SSP No. B.3 Requirements for vessels - caution to offerors

This provision has been amended to make clear that all costs for the disposal of vessel sludge, oily bilge water wastes, and oily ballast will be the responsibility of the vessel.

SSP No. B.4 "Superfund" tax on SPR petroleum - caution to offers

This provision has been revised to clarify that the 1.3 cents per barrel tax to fund the Oil Spill Liability Trust Fund was never enacted. The Notice of Sale will advise purchasers of their "Superfund" tax liability.

SSP No. B.23 Offeror's certification of acceptance period

This provisions has been revised to clarify that only the prices for the apparently successful line items must remain valid for 30 days after receiving a notification of Apparently Successful Offeror.

SSP No. C.5 Delivery and transportation scheduling

1. The procedures for the scheduling of deliveries have been changed to provide that all purchasers must propose a delivery schedule in writing no later than 15 days prior to the earliest delivery date offered in the Notice of Sale. In the event that conflicting requests are received, preference will be given to the highest priced offer. The SPR/PMO will respond to the purchasers no later than 10 days prior to the start of deliveries either to confirm the schedule or propose an alternative schedule. The purchaser will have two days to request reconsideration of any proposed alternative schedule but DOE's decision on reconsideration is final.

SSP No. C.8 Vessel loading procedures

1. The minimum average loading rate requirement for vessels has been reduced from 20,000 to 15,000 barrels per hour.

2. A vessel's Notice of Readiness for loading shall be tendered upon arrival at berth or at the customary anchorage (any anchorage from which the vessel can reach the SPR dock within six

hours). Customary anchorages for each SPR terminal are listed in Exhibit E.

3. Allowable berth time for vessels with capacities larger than 500,000 barrels is increased one hour for each 20,000 barrels to be loaded in excess of 500,000 barrels.

SSP No. C.9 Vessel laytime and demurrage

The citations to the tanker rate schedules to be used for calculating applicable demurrage rates have been corrected and the applicable reference period has been identified for each.

SSP No. C.15 Determination of quality of petroleum

This provision now states that, for the samples from which crude oil quality is determined, preference will be given to samples collected by means of an inline sampler, when one is available and operational.

Exhibit E

1. Customary anchorages have been identified for each SPR terminal.

2. Phillips Terminal's permission to berth vessels less than 32,000 deadweight tons is no longer required.

3. The draft restriction at the DOE St. James Terminal has been increased to 45 feet.

IV. Procedural Matters

A. Effective Date

As of June 3, 1988 these SSPs are adopted for use in the price competitive sale of SPR petroleum.

B. Paperwork Reduction Act

The forms used in the sale of the SPR petroleum have been cleared by the Office of Management and Budget in accordance with the Paperwork Reduction Act under control number 1910-1400.

List of Subjects in 10 CFR Part 625

Administrative Practice and Procedure, Oil and Gas Reserves, Strategic and critical materials, Strategic Petroleum Reserve.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 625—[AMENDED]

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

Authority: 15 U.S.C. 761; 42 U.S.C. 7101; 42 U.S.C. 6201.

2. Appendix A to 10 CFR Part 625 is revised to read as follows:

Appendix A to Part 625—Standard Sales Provisions

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EXHIBITS:

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C—Solicitation, Offer and Award—Standard Form 33
D—SPR Crude Oil Stream Characteristics
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H—Payment and Performance Guarantee—Letter of Credit
I—Instruction Guide for Funds Transfer Messages to Treasury
J—Form SPRPMO-F-6110.2-14—SPR Crude Oil Delivery Report
K—Offer Guarantee Calculation Worksheet

Section A - General Pre-Sale Information

A.1 List of acronyms:

(a) *ASO:* Apparently Successful Offeror
(b) *DLI:* Delivery Line Item
(c) *DOE:* U.S. Department of Energy
(d) *MLI:* Master Line Item
(e) *NA:* Notice of Acceptance
(f) *NS:* Notice of Sale
(g) *SSPs:* Standard Sales Provisions
(h) *SPR:* Strategic Petroleum Reserve
(i) *SPRCODR:* SPR Crude Oil Delivery Report (Exhibit J)
(j) *SPR/PMO:* Strategic Petroleum Reserve/ Project Management Office

A.2 Definitions

(a) *Affiliate.* The term "affiliate" means associated business concerns or individuals if, directly or indirectly, (1) either one controls or can control the other, or (2) a third party controls or can control both.

(b) *Business Day.* The term "business day" means any day except Saturday, Sunday or a U.S. Government holiday.

(c) *Contract.* The term "contract" means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

(d) *Contracting Officer.* The term "Contracting Officer" means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) *Government.* The term "Government", unless otherwise indicated in the text, means the United States Government.

(f) *Head of the Contracting Activity.* The term "Head of the Contracting Activity" means the Manager, Oak Ridge Operations Office, DOE.

(g) *Notice of Acceptance (NA).* The term "Notice of Acceptance" means the document which is sent by DOE to accept the purchaser's offer to create a contract.

(h) *Notification of Apparently Successful Offeror (ASO).* The term "notification of apparently successful offeror" means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

(i) *Notice of Sale (NS).* The term "Notice of Sale" means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information. (*See* Exhibit B, Sample Notice of Sale)

(j) *Offeror.* The term "offeror" means any person or entity (including a government agency) which submits an offer in response to a NS.

(k) *Petroleum.* The term "petroleum" means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal).

(l) *Project Management Office (SPR/PMO).* The term "Project Management Office" means the DOE personnel and DOE contractors located in Louisiana and Texas responsible for the operation of the SPR.

(m) *Purchaser.* The term "purchaser" means any person or entity (including a government agency) which enters into a contract with DOE to purchase SPR petroleum.

(n) *Standard Sales Provisions (SSPs).* The term "Standard Sales Provisions" means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the "standard sales agreement" referenced in the Strategic Petroleum Reserve "Drawdown" (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

(o) *Strategic Petroleum Reserve (SPR).* The term "Strategic Petroleum Reserve" means that DOE program established by Title I, Part B of the Energy Policy and Conservation Act, 42 U.S.C. Section 6201, et seq.

(p) *Vessel.* The term "vessel" means a tankship, an integrated tug barge (ITB) system, a self-propelled barge, or other barge.

A.3 Standard Sales Provisions

(a) These SSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR Part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale. (*See* Exhibit B, Sample Notice of Sale)

(b) *All offerors must,* as part of their offers for SPR petroleum in response to a NS, *agree without exception to all provisions of the SSPs which the NS makes applicable to the particular sale.* Offerors shall indicate their agreement by signing the Sales Offer Form (Exhibit A). The Government will not award a contract to an offeror which has failed to so agree.

A.4 Periodic revisions of the Standard Sales Provisions

DOE will review the SSPs periodically and republish them in the **Federal Register**, with any revisions. When a NS is issued, it will cite the **Federal Register** and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the **Federal Register**. Interested persons may obtain a copy of the current SSPs by writing to the address set forth in Provision No. A.5.

A.5 Potential offerors list for sales of petroleum

(a) The SPR/PMO will maintain a list of those potential offerors which wish to receive a NS whenever such a document is issued. In order to assure that prospective offerors will receive the NS or offer forms in timely fashion, all potential offerors are encouraged to submit the information in (d) as soon as possible. *A NS may be issued with a week or less allowed for the receipt of offers.* While DOE will use its best efforts to timely supply copies of the NS to persons not on the list who request the NS at the time an SPR petroleum sale is announced, this may not always be feasible in light of the short amount of time available before offers must be received.

(b) Any firm or individual may send a written request to be on the list to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Procurement and Sales Division, Mail Stop PR-651, 900 Commerce Road East, New Orleans, Louisiana 70123, Telephone Number (504) 734-4226.

The envelope should be marked "SPR Sales Mailing List."

(c) Copies of the SSPs and the NS, when one is issued, may also be obtained from this address.

(d) A request to be placed on the mailing list should be in writing and should include the following information:

Name of firm
Mailing address (Street and P.O. Box) City, State, Zip Code
Name of authorized agent and alternate authorized agent
Telephone numbers for agent and alternate including area code
Agent address, if different from firm represented
TWX number/code
Telecopier brand name and model number
Whether telecopier is automatic or operator controlled
Telephone number for telecopier transmission, including area code
Telephone number for verification of message receipt, including area code
Employer/taxpayer identification number or social security number
Dun's number

As DOE may use express mail which cannot be delivered to a Post Office Box, failure to provide a street address could result in untimely receipt of the NS and will be at the offeror's risk.

A.6 Publicizing the Notice of Sale

(a) The NS will be sent to names on the list of potential offerors referenced in Provision No. A.5. Interested persons may send a representative to the address in Provision No. A.5 to obtain a copy of the NS.

(b) In addition to those on the list of potential offerors, the NS will also be sent to anyone requesting it when a sale is announced. Firms may request the NS by telephone or in writing to the telephone number or address in Provision No. A.5 above.

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

(d) At the option of the Contracting Officer, advertisements may be placed in publications likely to reach interested parties. The advertisements will contain the salient features of the NS and a name and telephone number at the SPR/PMO to call for further information.

A.7 Penalty for false statements in offers to buy SPR petroleum

A penalty for making false statements is imposed in the False Statements Act, 18 U.S.C. Section 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes

any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Section B - Sales Solicitation Provisions

B.1 Requirements for a valid offer - caution to offerors

A valid offer to purchase SPR petroleum must meet the following conditions:

(a) The offer guarantee (*see* Provision No. B.10) must be received no later than the time set for the receipt of offers;

(b) The offer must include a completed Sales Offer Form (Exhibit A) and signed Standard Form 33 (Exhibit C) or other forms as specified in the NS;

(c) The offer must be received no later than the time set for receipt of offers;

(d) Any amendments to the NS which explicitly require acknowledgment of receipt must be properly acknowledged as provided for on Exhibit C; and

(e) The offeror must agree without exception to all provisions of the SSPs which the NS makes applicable to a particular sale, as well as to all provisions in the NS.

B.2 Certification of independent price determination

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to: (i) those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the signatory has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; (ii) as their agent does hereby so certify; and (iii) as their agent has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) An offer will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. If the offeror deletes or modifies (a)(2) above, the offeror must furnish with the offer a signed statement setting forth in detail the circumstances of the disclosure.

B.3 Requirements for vessels - caution to offerors

(a) The "Jones Act", 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Treasury. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision No. C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Transportation's interim rule concerning Reception Facility Requirements for Waste Materials Retained on Board (33 CFR Parts 151 and 158) implements the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). This rule prohibits any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oily waste reception facilities. SPR marine terminals (*see* Exhibit E, SPR Delivery Point Data) have Certificates of Adequacy and reception facilities for vessel sludge and oily bilge water wastes, all costs for which will be borne by the vessel. The terminals, however, may not have reception facilities for oily ballast. Accordingly, tankships without segregated ballast systems will be required to make arrangements for and be responsible for all costs associated with appropriate disposal of such ballast, or they will be denied permission to load SPR petroleum at terminals which lack reception facilities for oily ballast.

(c) By submission of this offer, the offeror certifies that it will comply with the "Jones Act" and all applicable ballast disposal requirements.

B.4 "Superfund" tax on SPR petroleum - caution to offerors

(a) Sections 4611 and 4612 of the Internal Revenue Code which imposed a tax on domestic and imported petroleum to support the Hazardous Substance Response Fund (the "Superfund") have been revised by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499, and the Omnibus Budget Reconciliation Act of 1986, Public Law No. 99-509. As amended, these sections impose taxes to finance the Hazardous Substance Superfund and the Oil Spill Liability Trust Fund as of January 1, 1987 and February 1, 1987, respectively.

(b) Section 4611 imposes a tax of 8.2 cents a barrel for domestic crude oil and 11.7 cents a barrel for foreign crude oil to support the "Superfund" on (1) crude oil received at a United States refinery and (2) petroleum products (including crude oil) entered into the United States for consumption, use or warehousing. In addition, Section 4611 provides for a possible additional tax of 1.3 cents a barrel for both foreign and domestic oil to support the Oil Spill Liability Trust Fund. Section 4612 provides that no tax is imposed if it is established that a prior tax imposed by Section 4611 has already been paid with respect to a barrel of oil.

(c) DOE has already paid the "Superfund" taxes on some of the oil imported and stored in the SPR. However, no "Superfund" tax has been paid on imported oil stored prior to the effective dates of these Acts or domestic oil stored in the SPR, nor has tax been paid into the Oil Spill Liability Trust Fund for any oil. Because domestic and imported crude oil for which no tax has been paid and imported crude oils for which "Superfund" taxes have been paid at different rates have been commingled in the SPR, upon drawdown of the SPR, the NS will advise purchasers of the tax liability.

B.5 Export limitations and licensing - caution to offerors

(a) Offerors for SPR petroleum are put on notice that SPR crude oils subject to different export control laws have been commingled in storage. Export of SPR crude oil is subject to U.S. export control laws, the provisions of which differ depending on the source and destination of the crude oil proposed to be exported. For example, imported crude oil stored in the SPR may be exported pursuant to applicable Department of Commerce "Short Supply Controls," 15 C.F.R. Part 377, if: the export is part of a transaction resulting in the importation of refined products of a quantity and quality not less than would be derived from domestic refining; the products are to be sold at prices no higher than the lowest prices at which they could have been sold by the nearest capable U.S. refinery; and for compelling economic or technological reasons beyond the exporter's control, the crude oil cannot reasonably be processed in the U.S. (15 CFR 377.6(d)(1)(vii)). However, there are somewhat more stringent, independent statutory tests to be met as preconditions to the export of certain other crude oils stored in the SPR, including Alaskan North Slope (ANS) and Naval Petroleum Reserves (NPR) oil. *See* 7(d) of the Export Administration Act of 1979, 50 U.S.C App. 2406(d) (ANS oil) and 10 U.S.C. 7430(e) (NPR oil); *see also* 30 U.S.C. 185(u) (oil shipped across a Mineral Lands Leasing Act Section 28(u) right-of-way) and 43 U.S.C. 1354(a) (OCS oil).

(b) By submission of this offer, the offeror certifies that it will comply with any applicable U.S. export control laws.

B.6 Issuance of the Notice of Sale

In the event petroleum is sold from the SPR, DOE will issue a NS containing all of the pertinent information necessary for the offeror to prepare a priced offer. *A NS may be issued with a week or less allowed for the receipt of offers.* Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.7 Submission of offers and modification of previously submitted offers

(a) Unless otherwise provided in the NS, offers must be submitted to the SPR/PMO in New Orleans, Louisiana, by mail or hand-delivery. Direct cash deposits as offer guarantees will be sent by wire in accordance with Provision No. C.24.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn by hand delivery, mail, telegram, or telex, provided that the hand delivery, mail, telegram, or telex is received at the designated office prior to the time specified for receipt of offers.

(c) Envelopes containing offers and any material related to offers shall be plainly marked on the outside: "RE: NS _____ FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFERS ARE DUE (insert time of opening), LOCAL NEW ORLEANS, LA TIME ON (insert date of opening). MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE." Envelopes containing modified offers or any material related to supplements or modifications of offers, shall be plainly marked on the outside: "RE: NS _____FOR SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFER MODIFICATION. MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE."

(d) The envelope shall be marked with the full name and return address of the offeror.

(e) Offers being sent by mail and modifications being sent by hand delivery, mail, telegram, or telex must be received at the address specified in the NS.

(f) Handcarried offers brought during normal business hours on the day set for receipt of offers, or any day prior to that day, shall be taken by the offeror to the place specified in the NS. This includes mail being delivered by a delivery service. At all other times, handcarried offers shall be placed in the bid box, located as specified in the NS.

(g) Public opening of offers is not anticipated unless otherwise indicated in the NS. An abstract of offers will be prepared and posted in a prominent place at the SPR/PMO in New Orleans, Louisiana, for public viewing no later than 48 hours after the specified time and date for the receipt of offers. Persons wishing to *see* copies of the offers may contact the Contracting Officer to arrange to view the copies at the SPR/PMO.

B.8 Acknowledgment of amendments to a Notice of Sale

When an amendment to a NS requires acknowledgment of receipt, receipt by an offeror must be acknowledged (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on Standard Form 33 (Exhibit C); or (c) by letter, telegram, or telex sent to the address specified in the NS. Such acknowledgment must be received prior to the time specified for receipt of offers.

B.9 Late offers, modifications of offers, and withdrawal of offers

(a) Any offer received at the office designated in the NS after the time specified for receipt will be considered only if it is received before award is made and only under the following conditions:

(1) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a NS requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier); or,

(2) it was sent by mail, telegram or telex if authorized, and it is determined by the Contracting Officer that the late receipt was due solely to mishandling by the SPR/PMO after receipt at the address specified in the NS.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) above, except that it shall be mailed not less than the third calendar day prior to the date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or its authorized representative, provided the representative's identity is made known and the representative signs a receipt for the offer, but only if the withdrawal is made prior to the time set for receipt of offers.

(c) The only acceptable evidence to establish:

(1) the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on either (i) the envelope or wrapper, or (ii) the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification or withdrawal shall be deemed to have been mailed late. Post mark means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

(2) the time of receipt at the address specified in the NS is the time/date stamp at such address on the offer's wrapper or other documentary evidence of receipt maintained at the place of receipt.

(d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Government will be considered at any time it is received, and may be accepted.

B.10 Offer guarantee

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified for receipt of offers no later than the time and date set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer.

(c) The amount of each offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. To assist in this calculation, instructions and a worksheet are available at Exhibit K. Submission of the worksheet is not desired.

(d) Each offeror must submit one of the following types of offer guarantees with each offer:

(1) A certified or cashier's check payable to the U.S. Department of Energy, drawn on a U.S. Bank;

(2) A wire cash deposit to the account of the U.S. Treasury in accordance with Provision No. C.24, all wire deposit costs to be borne by the offeror; or

(3) A letter of credit from a U.S. depository institution conforming without exception to the contents required by Exhibit G, Offer Guarantee - Letter of Credit, all letter of credit costs to be borne by the offeror.

(e) If the offeror or bank forwards the offer guarantee separately from the offer, the envelope shall clearly say "OFFER GUARANTEE OF (Name of Company)" and shall be clearly marked in accordance with Provision No. B.7(c).

(f) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) withdraws its offer within 10 days following the time set for receipt of offers;

(2) withdraws its offer after having agreed to extend its acceptance period; or

(3) having received a notification of ASO, fails to furnish an acceptable payment and performance guarantee within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference or additional resale costs. Use of the offer guarantee for such recovery shall not preclude recovery by DOE of damages in excess of the amount of the offer guarantee caused by such failure of the offeror.

(g) Letters of credit furnished as offer guarantees must be valid for at least 21 calendar days after the date set for the receipt of offers.

(h) Offer guarantees (except letters of credit) will be returned to an unsuccessful offeror 5 business days after expiration of the offeror's acceptance period or 3 business days after award of contracts for delivery line items on which the offeror submitted a price, whichever is first, except as provided in (i) below, and to a successful offeror upon

receipt of a satisfactory performance and payment guarantee. Letters of credit will be returned only upon request. Where the offer guarantee was a wire cash deposit, a cashier's check or a certified check, the offeror may apply it toward advance payment.

(i) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.11 Explanation requests from offerors

Offerors may request explanations regarding meaning or interpretation of the NS from the individual and telephone number indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.12 Currency for offers

Prices shall be stated and invoices shall be paid in U.S. dollars.

B.13 Language of offers and contracts

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.14 Proprietary data

If any information submitted in connection with a sale is considered proprietary, that information should be so marked, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so marked is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.15 SPR crude oil streams and delivery points

(a) The geographical locations of the terminals and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for those streams are as follows, (*see* also Exhibit D, SPR Crude Oil Stream Characteristics, and Exhibit E, SPR Delivery Point Data):

Geographical location	Delivery points	Crude oil Streams
Freeport, Texas..	Phillips Terminal, or Phillips Terminal No. 2 Docks.	SPR Bryan Mound Sweet. SPR Bryan Mound Sour. SPR Bryan Mound Maya.
Texas City, Texas.	ARCO Terminal, or ARCO Docks.	SPR Bryan Mound Sweet. SPR Bryan Mound Sour.
Nederland, Texas.	Sun Terminal, or Sun Docks.	SPR West Hackberry Sweet. SPR West Hackberry Sour.
St. James, Louisiana.	LOCAP Terminal, or DOE St. James Terminal Docks.	SPR Weeks Island Sour SPR Bayou Choctaw Sweet. SPR Bayou Choctaw Sour.

(b) The NS may change delivery points and it may also include additional terminals, temporary storage facilities or systems utilized in connection with petroleum in transit to the SPR. Alternatively, DOE or its contractor may provide the transportation to the purchaser's facility, for example, when the petroleum is in transit to the SPR at time of sale.

(c) The NS may contain additional information supplementing Exhibit E, SPR Delivery Point Data.

B.16 Notice of Sale line item schedule - petroleum quantity, quality, and delivery method

(a) Unless the NS provides otherwise, the possible master line items (MLI) and delivery line items (DLI) which may be offered are as provided in Exhibit A, SPR Sales Offer Form. Currently, there are eight MLIs in Exhibit A, one for each of the eight crude oil streams that the SPR has in storage. The NS may offer fewer than the eight possible MLIs.

(b) Each MLI contains several DLIs, each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI. This is most likely to occur in the first sales period of a drawdown if the period of sale does not correspond to a calendar month.

(1) DLI-A covers petroleum to be transported by pipeline, either common carrier or local. The nominal delivery period is one month.

(2) DLI-B, DLI-C and DLI-D cover petroleum to be transported by tankships: DLI-B, covering tankships to be loaded from the 1st through the 10th of the month; DLI-C, tankships to be loaded from the 11th through the 20th; and DLI-D, tankships to be loaded from the 21st through the last day of the month.

(3) DLI-E, DLI-F and DLI-G cover petroleum to be transported by barges (Caution: These DLIs are currently only applicable to deliveries of West Hackberry Sweet and Sour crude oil streams from Sun Docks): DLI-E, covering barges to be loaded from the 1st through the 10th of the month; DLI-F, barges to be loaded from the 11th through the 20th; and DLI-G, barges to be loaded from the 21st through the last day of the month.

(4) Where the storage site is connected to more than one terminal or pipeline (presently this only occurs at Bryan Mound) additional DLIs will be offered. The additional DLIs will include DLI-H, covering petroleum to be transported by pipeline over the period of a month; DLI-I, covering tankships to be loaded from the 1st through the 10th; DLI-J, tankships to be loaded from the 11th through the 20th; and DLI-K, tankships to be loaded from the 21st through the last day of the month. The Notice of Sale will specify which DLIs are offered on each MLI.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may vary the estimated MLI quantities by +/−10 percent in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity which could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that, in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the maximum amount of the particular SPR crude oil stream that can be moved by that transportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represent estimated transportation capacity, not the amount of petroleum offered for sale. Where necessary to avoid an unfair competitive advantage for local pipeline owners, e.g., where there are only one or two likely offerors, the NS may omit a pipeline DLI. Where this occurs, those offerors may bid against vessel DLIs and, if successful, request a contract modification under Provision No. C.6, to permit delivery of the awarded oil to a pipeline.

(f) The NS will not specify what portion of the petroleum which DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that: DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision No. B.15, which shall be made in accordance with Provision No. C.5. A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision No. C.6.

(h) Exhibit D, SPR Crude Oil Stream Characteristics, contains nominal

characteristics for each SPR crude oil stream. Prospective offerors are cautioned that these data will likely change as more crude oil is stored in the SPR. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B.17 Line item information to be provided in the offer

(a) Each offeror, if determined to be an ASO on a DLI, agrees to enter into a contract for the purchase of the quantity of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision No. C.18) in accordance with the terms of that contract.

(b) An offer may be for more than one MLI. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of sweet or 1,000,000 barrels of sour.

(c) An offeror may submit more than one offer. However, separate forms must be prepared and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the form in Exhibit A or other forms as required by the NS:

(1) MLI quantity. ("MAXQ" on the Exhibit A offer form) The offeror shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) DLI quantity. ("DESQ") The offer shall state the number of barrels which the offeror will accept on each DLI, i.e., by the delivery mode and during the delivery period specified. The quantity stated on a single DLI shall not exceed the MAXQ for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its designated DLI quantities would exceed its maximum MLI quantity; otherwise, the total of its designated DLI quantities should equal its maximum MLI quantity.

(3) DLI unit price ("UP$$") and total price. The offer shall state the price per barrel for each DLI for which the offeror has designated a desired quantity, as well as the total price (quantity times unit price). Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, or indicates the same preference for more than one DLI, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent ($0.0001). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Minimum DLI quantity acceptable. ("MINQ") The offeror must choose whether to accept only the stated DLI quantity (DESQ) or, in the alternative, to accept any quantity awarded between the offer's stated DLI quantity and the minimum contract quantity for the DLI (indicated by the "N" and "Y" blocks respectively under "MINQ" on the offer form). However, DOE will award less than the DESQ only if the quantity available to be awarded is less than the DESQ. If the offer fails to indicate the offeror's choice, the offer will be evaluated as though the offeror has indicated willingness to accept the minimum contract quantity.

(5) Any other data required by the NS.

B.18 Mistake in offer

(a) After opening and recording offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any price discrepancies or quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) Price discrepancy: An offer for a DLI should contain the unit price per barrel being offered, the desired quantity of barrels to which the unit price applies, and an extension price which is the total of the quantity desired multiplied by the unit price offered. If there is a discrepancy between the unit price and the extension price, the unit price will govern and be recorded as the offer, unless it is clearly apparent on the face of the offer that there has been a clerical error, in which case the Contracting Officer may correct the offer.

(2) Quantity discrepancy: In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, where a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer. In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity was the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in (a) may have been made, he shall request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by telex. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within as little as 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in (1) and (2) below if an offeror alleges a mistake after opening of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, where the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B.19 Evaluation of offers

(a) The Contracting Officer will be the determining official as to whether an offer is responsive to the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B.20 Procedures for evaluation of offers

(a) Award on each DLI will be made to the highest responsible offerors which submit offers responsive to the SSPs and the NS and which have provided the required payment and performance guarantee as required by Provision No. C.19.

(b) DOE will array all price offers on an MLI from highest to lowest for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offer involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) The highest offers will be reviewed for responsiveness to the NS.

(4) In the event the highest offer does not take all the crude oil available on the MLI, sequentially, the next highest offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather

the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest offer.

(5) In the event of tied offers and an insufficient quantity available on the MLI or insufficient capacity on the DLI to fully award all tied offers, the available MLI quantity or DLI capacity remaining will be allotted pro rata among the tied offers using the following formula:

$$\frac{\text{The quantity the offeror is willing to purchase at the tied price}}{\text{The sum of all the quantities the tied offerors are willing to purchase at the tied price}} \times \text{the quantity or capacity remaining to be allotted}$$

If after application of this formula, the pro rata share of any offeror is less than 90 percent of the quantity which the offeror is willing to accept (as indicated in the offer), the Contracting Officer in his sole discretion may do one or more of the following: (i) make additional quantity or capacity available and increase the offeror's share to its minimum acceptable quantity; (ii) contact the offeror to determine whether alternative delivery arrangements can be made, permitting the offeror to accept his prorata share; (iii) eliminate the offeror and recalculate the shares of all remaining offerors; or (iv) not award that offeror's prorata share. If any quantities remain after this process, the Contracting Officer may elect not to award those quantities, or to award those quantities in accordance with Provision No. B.22.

(6) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable.

(7) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified by telephone and advised to provide to the Contracting Officer, within five business days or such other longer time as the Contracting Officer shall determine, a letter of credit (*see* Exhibit H, Payment and Performance Guarantee - Letter of Credit) or advance payment as specified in Provision No. C.19. Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where: (i) an offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or (ii) evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity which represents a violation of law or regulation (including an Executive Order having the force and effect of law); or (iii) evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror which shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B.21 Financial statements and other information

(a) As indicated in Provision No. B.20(b)(7) above, compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. Therefore, DOE does not intend to ask for financial information from all offerors. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in the unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, plans for complying with the Jones Act, etc. The Contracting Officer shall set a deadline for receipt of this information.

B.22 Resolicitation procedures on unsold petroleum

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer, at his option, may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum which has been awarded or allotted for award becomes available to DOE for resale, the Contracting Officer may use the following procedures:

(1) If priced offers remain valid in accordance with Provision No. B.23, the petroleum will go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision No. B.23, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror, etc.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.23 Offeror's certification of acceptance period

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that the successful line items of its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.24 Notification of Apparently Successful Offeror

The following information will be provided to the offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;

(b) Total quantity to be awarded on each MLI and on each DLI;

(c) Price in U.S. dollars per barrel for each DLI;

(d) Extended total price offer for each DLI;

(e) Provisional contract number;

(f) Any other data necessary.

B.25 Contract documents

If an offeror is successful, DOE will make award using a NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. Attached to the NA will be the NS and the successful offer. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. The Contracting Officer also shall provide the purchaser with an information copy of the then-current SSPs as published in the **Federal Register**. If time constraints require it, DOE may accept the offeror's offer by an electronic notice, such as telegram or telex, and the contract award shall be effective upon issuance of such notice. The electronic notice will be followed by a mailing of full documentation as described above.

B.26 Purchaser's representative

As part of its offer, each offeror shall designate an agent as a point of contact for any telephone calls or correspondence from the Contracting Officer. Any such agent shall have a U.S. address and telephone number and must be conversant in English.

B.27 Procedures for selling to other U.S. Government agencies

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision No. B.20. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must complete all transportation arrangements for moving the petroleum. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C - Sales Contract Provisions

C.1 Delivery of SPR petroleum

(a) The purchaser, at its expense, shall make all necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings, a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services other than those provided by DOE or its agent, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent, subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C.2 Compliance with the "Jones Act" and the U.S. export control laws

Failure to comply with the "Jones Act," 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, and with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination for default in accordance with Provision No. C.27. Purchasers who have failed to comply with the "Jones Act" or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers under Provision No. B.20 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with 10 CFR Part 625.

C.3 Storage of SPR petroleum

Continued storage of purchasers' oil in the SPR facilities after the end of the contract delivery periods is not permitted, unless specifically authorized by the Secretary of Energy and provided for in the NS. Allowing petroleum to remain in storage as the result of failure to complete delivery arrangements may result in assessement of liquidated damages under Provision Nos. C.27 through C.29 unless such failure is excused by those provisions.

C.4 Environmental compliance

(a) Vessels to be used for the transportation of petroleum purchased from the SPR will comply with all applicable rules and regulations, including The Ports and Waterways Safety Act, The Federal Water Pollution Control Act of 1972, The Oil Pollution Control Act of 1961, and other applicable statutes, rules and regulations, including the following: Parts 151, 153, 157, 158 and 159 of Title 33, and Parts 30-36 and 542 of Title 46 of the Code of Federal Regulations.

(b) In the event tankships are used in the performance of this contract, the purchaser will employ only tankships whose owners are parties to the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) or who carry equivalent, as determined by the Contracting Officer, liability coverage.

(c) All crude oil transfer operations in performance of the contract will be in accordance with the guidelines detailed in the International Oil Tanker Safety Guide, U.S. Coast Guard Regulations, and the "Ship to Ship Transfer Guide" of the International Chamber of Shipping Oil Companies International Marine Forum.

(d) Failure of the purchaser or the purchaser's subcontractors to comply with all applicable rules and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision No. C.27, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and transportation scheduling

(a) Unless otherwise instructed in the notification of ASO, each purchaser shall submit a proposed vessel lifting program and/or pipeline delivery schedule to the SPR/PMO by hand-delivery, mail, telex, or facsimile, no later than the fifteenth day prior to the earliest delivery date offered by the NS. The vessel lifting program shall specify the requested three-day loading window for each tanker and the quantity to be lifted. The pipeline schedule will specify the dates on which deliveries are to be tendered to the pipeline and the quantity to be tendered on each date. In the event conflicting requests are received, preference will be given to such requests in descending order, highest priced offer first. The SPR/PMO will respond to each purchaser no later than the tenth day prior to the start of deliveries, either confirming the schedule as originally submitted or proposing alterations. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex or express mail notice on the day after dispatch. The purchaser shall be deemed to have agreed to those alterations unless the purchaser requests the SPR/PMO to reconsider within two days after receipt of such alterations. The SPR/PMO will use its best efforts to accommodate such requests, but its decision following any such reconsideration shall be final and binding.

(b) Telex and facsimile telephone numbers, as well as the address to which mailed and hand-carried proposed schedules should be delivered, will be provided in the notification of ASO.

(c) Notwithstanding paragraph (a) above, ASOs and purchasers may request delivery commencing prior to the contractual delivery period. DOE will honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on the same day, the highest-priced offer will be given preference. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision No. C.6. DOE may not be able to confirm requests for early deliveries until 24 hours prior to the load date.

C.6 Contract modification - alternate delivery line items

A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification will be permitted by DOE if in the sole judgment of DOE the change would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification. The NS shall establish per barrel rates for such increased costs.

C.7 Application procedures for "Jones Act" waivers

(a) Unless otherwise specified, an ASO or purchaser seeking a waiver of the "Jones Act" should submit a request by letter, telegram or telex to: U.S. Customs Service, Chief, Carrier Rulings Branch, 1301 Constitution Avenue, NW., Washington, DC 20229, Telephone No. (202) 566-5706, Telex (710) 822-9525.

Copies of the request should also be sent to:

(1) Assistant Secretary of Defense (Acquisition and Logistics), Department of Defense, Washington, DC 20301-8000;

(2) Associate Administrator for Marketing and Domestic Enterprise, Maritime Administration, Department of Transportation, Mail Stop MAR-800, Washington, DC 20590, Telex (710) 822-9426;

(3) Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves/ Deputy Assistant Secretary for Energy Emergencies, Mail Stop FE-40, Washington, DC 20585, Telex, (710) 822-0176.

(b) A purchaser seeking a waiver to use a vessel built with a Construction Differential Subsidy (and, if applicable, operated with Operating Differential Subsidy) should have the owner of that vessel submit a request by letter, telegram, or telex for such waiver(s) to: Maritime Administrator, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Telex (710) 822-9426. Copies of the request shall be sent to:

(1) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves/Deputy Assistant Secretary for Energy Emergencies, Mail Stop FE-40, Washington, DC 20585, Telex (710) 822-0176.

(2) Chief, Carriers Rulings Branch, U.S. Customs Service, Department of the Treasury, Washington, DC 20229, Telex (710) 822-9525.

For speed and brevity, the request may incorporate by reference appropriate contents of any earlier "Jones Act" waiver request by the purchaser. Under Section 805(a), a hearing is also required for any intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service.

(c) Any request for waiver should include the following information:

(1) Name, address and telephone number of requestor;

(2) Purpose for which waiver is sought, e.g., to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;

(3) Name and flag of registery of vessel for which waiver is sought, if known at the time of waiver request, and either the scheduled 3-day delivery window(s), if available, or 10-day delivery period applicable to the contract;

(4) The intended number of voyages, including the ports for loading and discharging;

(5) Estimated period of time for which vessel will be employed; and

(6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence, telexes, telegrams, and telephone conversation summaries. Use of commercial brokers and the Transportation News Ticker (TNT) is suggested for maximum market coverage. Requests for waivers by telegram or telex may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after transmittal of the telegram or telex requesting the waiver.

(7) For waivers to use Construction Differential Subsidy vessels, the request must also contain a specific agreement for Construction Differential Subsidies payback pursuant to Section 506 of the Merchant Marine Act of 1936 and must be signed by an official of the vessel owner authorized to make a payback commitment.

(d) If there are shown to be "Jones Act" vessels available and in a position to meet the loading dates required, no waivers may be approved.

(e) The names of any vessel(s) to be employed under a "Jones Act" waiver must be provided to the U.S. Customs Service no later than 3 days prior to the beginning of the 3-day loading window scheduled in accordance with Provision No. C.5.

C.8 Vessel loading procedures

(a) After notification of ASO, each ASO shall arrange with the SPR/PMO a schedule of vessel loading windows in accordance with Provision No. C.5.

(b) The length of the scheduled loading window shall be 3 days. The average quantity to be lifted during a loading window will be no less than DOE's minimum contract quantity.

(c) Tankships, ITBs, and self-propelled barges shall be capable of sustaining a minimum average load rate of 15,000 barrels per hour (BPH) during loading operations. Barges with a load rate of not less than 5,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/ PMO, lower loading rates and the use of barges at the Sun and Phillips Terminals' suitably equipped tankship docks may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying: (i) name and size of vessel or advice that the vessel is To Be Nominated at a later date (such date to be no later than 3 days before commencement of the loading window); (ii) estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) below); (iii) quantity to be loaded and contract number; and (iv) other relevant information requested by the SPR/PMO. DOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be firm. Once established, changes in such nomination details may be made by only mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with the above provisions.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the quantity scheduled to be delivered during a loading window, the information in (d) above and (f) below shall be provided for each vessel.

(f) The vessel shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the purposes of vessel demurrage (*see* Provision No. C.9). In addition, the vessel shall notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO: (i) quantity of oily bilge wastes or sludge requiring discharge ashore; (ii) cargo loading rate requested; (iii) number, size, and material of vessel's manifold connections; and (iv) defects in vessel or equipment affecting performance or maneuverability.

(g) Notice of Readiness shall be tendered upon arrival at berth or at customary anchorage which is deemed to be any anchorage within 6 hours vessel time to the SPR dock. The preferred anchorages are identified in Exhibit E. The Notice of Readiness shall be confirmed promptly in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(i) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE. Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent, and bear all costs associated with such services.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours, and barges shall be allowed berth time of 24 hours, as defined below. Vessels loading cargo quantities in excess of 500,000 barrels shall be allowed berth time of 36 hours plus 1 hour for each 20,000 barrels to be loaded in excess of 500,000 barrels. Conditions below excepted, however, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue

until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immmigration clearance.The time required by the vessel to discharge oily wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time in excess of allowable berth time provided for above, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision No. C.10.

C.9 Vessel laytime and demurrage

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in excess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon arrival date, established in accordance with Provision No. C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside, or at 0600 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside.

(c) For all hours or any part thereof of vessel laytime which elapse in excess of the allowed vessel laytime for loading provided for above, demurrage shall be paid by DOE, for U.S.-flag vessels, at the lesser of the demurrage rate in the tanker voyage or charter party agreement, or the most recently available United States Freight Rate Average (USFRA) for a hypothetical tanker with a deadweight in long tons equal to the weight in long tons of the crude oil loaded, multiplied by the most recent edition of the American Tanker Rate Schedule rate for such hypothetical tanker. For foreign flag vessels, demurrage shall be as determined above, except that the London Tanker Brokers' Panel Average Freight Rate Assessment (AFRA) and most recent edition of the Worldwide Tanker Nominal Freight Scale shall be used as appropriate, if less than the charter party rate. For all foreign flag vessel loadings that commence during a particular calendar month, the applicable AFRA shall be the one that is determined on the basis of freight assessments for the period ended on the 15th day of the preceding month. The demurrage rate for barges will be the hourly rate contained in the charter of a chartered barge, or if it is not a chartered barge, at a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual demurrage expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the quantity scheduled to be delivered during a single loading window, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with (a) above.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (*see* Provision No. C.17).

C.10 Purchaser liability for excessive berth time

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision No. C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.11 Pipeline delivery procedures

(a) No later than the last day of the month preceding the month of delivery, the purchaser shall furnish the SPR/PMO with the following information: (i) confirmation of the pipeline's acceptance of the amount of the petroleum proposed to be delivered in the delivery month; (ii) an estimated schedule (consistent with the terms of the contract) for delivery of the petroleum to the pipeline; and (iii) the name and telephone number of the pipeline point of contact with whom the SPR/PMO should coordinate the petroleum delivery.

(b) Once established, the pipeline delivery schedule can only be changed with DOE's prior written consent.

C.12 Title and risk of loss

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment - when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment - when the petroleum passes the permanent flange connecting the SPR's distribution terminal to the commercially-owned pipeline, except for shipments via the LOCAP and ARCO Terminals where title and risk of loss pass when the petroleum enters the LOCAP or ARCO Terminal meter bank.

(c) For in-transit shipments - when the petroleum passes the permanent flange of the discharging vessel manifold upon discharge into the purchaser's designated marine terminal facility or vessel.

C.13 Acceptance of crude oil

(a) When practical, the NS shall update the SPR crude oil stream characteristics shown in Exhibit D, SPR Crude Oil Stream Characteristics. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided below, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil stream delivered both has a total sulfur content (by weight) in excess of 3.5 percent if Bryan Mound Maya, 2.0 percent if any other sour crude oil stream, or 0.50 percent if a sweet crude oil stream, and, in addition, has an API gravity less than 20°API if Bryan Mound Maya, 26°API if any other sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision No. C.14, or request negotiation of the contract price. Unless the purchaser submits a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of delivery, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision No. C.14. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision No. C.34.

C.14 Price adjustments for quality differentials for crude oil

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, price adjustments will be made solely for variations between the API gravity of the crude oil delivered and the API gravity of the crude oil stream contracted for as published in the NS. Price adjustments for SPR crude oil streams are expected to be

similar to one or more commercial crude oil differential postings for equivalent quality crude oil.

(b) Price adjustments will be applied only to the amount of variation by which the API of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/− 0.5°API) from the API gravity of the crude oil stream contracted for as published in the NS. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5°API and decreased by that amount if the crude oil delivered falls below the published API gravity by more than 0.5°API.

C.15 Determination of quality of petroleum

(a) The quality of the crude oil delivered to the purchaser will be determined from samples taken from the delivery tanks in accordance with API *Manual of Petroleum Measurement Standards*, Chapter 8.1, *Manual Sampling of Petroleum and Petroleum Products* (ASTM D4057), latest edition, or from the composite sample collected by an automatic inline sampler whose performance has been verified in accordance with the sampling system proving system outlined in the API *Manual of Petroleum Measurement Standards*, Chapter 8.2, *Automatic Sampling of Petroleum and Petroleum Products* (ASTM D4177), latest edition. Preference will be given to samples collected by means of an automatic inline sampler when such a system is available and operational. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: *API Manual of Petroleum Measurement Standards*, Chapter 10.1, *Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method* (ASTM D473) (IP53), latest edition; and API *Manual of Petroleum Measurement Standards*, Chapter 10.2, *Determination of Water in Crude Oil by Distillation* (ASTM D4006) (IP358), latest edition.

Alternate methods: *API Manual of Petroleum Measurement Standards*, Chapter 10.3, *Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure)* (ASTM D4007) (IP 359), latest edition; or *API Manual of Petroleum Measurement Standards*, Chapter 10.4, *Standard Methods of Test for Water—and Sediment in Crude Oils*, (API Pub. 2542) (ASTM D96), latest edition.

(2) Sulfur

Primary method: ASTM D1552, *Sulfur in Petroleum Products (High) Temperature Method)*, latest edition.

Alternate methods: ASTM D2622, *Sulfur in Petroleum Products (X-ray Spectographic Method)*, latest edition; or ASTM D4294, *Sulfur in Petroleum Products by Non-Dispersive X-ray Fluorescence Spectrometry*, latest edition.

(3) API Gravity

API *Manual of Petroleum Measurement Standards*, Chapter 9.1, *Hydrometer Test Method for Density, Relative Density (Specific Gravity)*, or *API Gravity of Crude Petroleum and Liquid Petroleum Products* (ASTM D1298), latest edition; or *API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)* (ASTM D287), latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The primary methods are binding in any dispute over quality characteristics of SPR crude oil.

(b) The purchaser may arrange for additional services to witness and verify testing simultaneously with the Government Quality Assurance Representatives. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision No. C.34. Should the purchaser opt not to provide such additional services, then the Government findings will be binding on the purchaser

C.16 Determination of quantity of petroleum

(a) The quantity of crude oil delivered to the purchaser will be determined from opening and closing tank gauges with adjustment for opening and closing free water and sediment and water as determined from shore tank samples where an inline sampler is not available, or delivery meter reports. All volumetric measurements made when the crude oil is at a temperature other than 60°F will be converted to Net Standard Volume in barrels at 60°F, using the *API Manual of Petroleum Measurement Standards*, Chapter 11.1, Volume 1, *Volume Correction Factors* (ASTM D1250) (IP 200); Table 5A-*Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60°F*; Table 6A-Generalized Crude Oils, Correction of Volume to 60°*F* Against API Gravity at 60°F, latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a composite sample collected by a certified in-line sampler.

(b) The quantity determination shall be made and certified by the DOE contractor responsible for loading operations, and witnessed by the Government Quality Assurance Representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision No. C.34. Should the purchaser not arrange for additional services, then DOE's findings shall be binding on the purchaser.

C.17 Delivery documentation

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO-F-6110.2-14 (*see* Exhibit J for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchaser's authorized representative after completion of delivery. They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.18 Contract amounts for crude oil

The contract quantities and dollar value stated in the NA are estimates. The per barrel unit price is subject to adjustment due to variation in the API gravity from the published characteristics. In addition, due to conditions of loading and shipping, the quantity actually delivered may vary by +/−10 percent for each DLI. However, a purchaser is not required to engage additional vessels if sufficient vessels to take delivery of at least 90 percent of the contract quantity have been engaged.

C.19 Payment

(a) Payment for oil delivered shall be due no later than 10 days after the date of delivery.

(b) Payment shall be made by the payment and performance guarantee which must be either:

(1) A letter of credit conforming without exception to requirements of Provision No. C.20, and Exhibit H, Payment and Performance Guarantee - Letter of Credit and equal to 100 percent of the contract amount; or

(2) An advance payment by cash wire deposit, made in accordance with the wire transfer instructions in Provision No. C.24 and equal to 110 percent of the contract amount.

(c) The purchaser must furnish an acceptable payment and performance guarantee before DOE will execute the NA. The Contracting Officer will inform the ASO by telephone that the guarantee is due within a period which may be as short as 5 business days. The Contracting Officer may, at his discretion, send a confirming telegram of the notification, but the timeliness of receipt for the guarantee is determined by the date of the telephone call.

(d) All wire deposit and letter of credit costs will be borne by the purchaser.

(e) The Contracting Officer (who may act through the SPR/PMO Planning and Financial Management Division) may draw against this payment and performance guarantee at any time after the first delivery for any monies due under the contract for petroleum delivered and at any time for any other monies owing to DOE under the contract, no matter how the debt arose.

C.20 Payment and performance letters of credit - general requirements

(a) Each letter of credit must conform without exception to the standard letter of credit provided as Exhibit H.

(b) DOE does not require information concerning the issuing bank's agreement with its customer. Any language in the letter of

credit in addition to that specified in Exhibit H shall make the letter of credit unacceptable and shall be cause for rejection of the offer.

(c) As set forth in Exhibit H, the letter of credit provides for payment to DOE by wire transfer of funds over FEDWIRE. If a letter of credit is from a single depository institution, including a branch or an agency of a foreign bank, (hereinafter referred to as "bank") that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant in the Fed's FEDWIRE funds transfer system. If the letter of credit is issued by a syndicate of banks, only the institution acting as agent for the syndicate and responsible for honoring the drafts drawn under the letter of credit must maintain a Fed account and be a participant in FEDWIRE.

(d) DOE reserves the right to request evidence that the bank official signing the letter of credit is authorized to do so, such as a confirming telex, telephone call, or letter from another bank official, or other appropriate evidence as determined by the Contracting Officer.

C.21 Billing and payment - with purchaser's letter of credit

(a) After delivery of the SPR petroleum and completion of the delivery documentation, the Contracting Officer shall prepare an invoice in accordance with the contract and the delivery documentation.

(b) Upon completion of the invoice, the SPR/PMO Planning and Financial Management Division shall prepare a draft requesting a wire transfer of funds in accordance with the letter of credit and transmit that message to the bank issuing the letter of credit by express mail or telex, or via the FEDWIRE system. On the date specified in the draft, nominally 10 days after completion of the delivery of petroleum, the bank shall use the wire transfer procedures specified in the letter of credit to transfer the invoiced funds to the account of the U.S. Treasury. If the draft is not transmitted within 10 days of completion of delivery of the petroleum, the due date shall be the next business day after receipt of the draft.

(c) The SPR/PMO shall provide copies of the invoices to the purchaser and the bank by mail.

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying any interest due (*see* Provision No. C.25) from the due date specified in the draft.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the purchaser.

C.22 Billing and payment - with purchaser's advance payment

(a) If the offeror elects to pay in advance, delivery documentation will be provided to the purchaser after each delivery. After the last delivery under the contract, a reconciliation billing will be made. If money is due from the purchaser to DOE, an invoice will be issued to the purchaser (*see* paragraph (b) below). If money is due the purchaser, a Treasury check will be issued in accordance with the Treasury Fiscal Requirements Manual.

(b) In accordance with the delivery documentation and the contract, the Contracting Officer shall determine the amount of any reconciliation invoice and transmit it to the purchaser by express mail, mail or telex. A purchaser is deemed to have received mailed invoices on the second day after their dispatch and telex and express mail invoices on the day after dispatch. Reconciliation invoices must be paid in accordance with Provision No. C.24 10 business days after the purchaser is deemed to have received them.

C.23 Replacement of funds in the payment and performance guarantee

(a) Payment and performance guarantees must be maintained in full force and effect to the Contracting Officer's satisfaction at the following minimum levels until final payment under the contract:

(1) Letter of credit at 100 percent of the contract price of the petroleum remaining to be paid for; and

(2) Advance payment at 110 percent of the contract price of the petroleum remaining to be delivered.

(b) If the Contracting Officer draws against the letter of credit, or makes charges against the advance payment, for monies owed DOE for oil delivered, for liquidated damages or for other funds due DOE, the purchaser shall be notified within 24 hours by express mail, mail or telex of the fact of such withdrawal or charge and the amount thereof. Purchaser is deemed to have received a mailed notice on the second business day after its dispatch and a telex or express mail notice the next business day after its dispatch.

(c) In the event that a draw against the payment and performance guarantee causes its amount to fall below the levels specified in (a) above, the purchaser shall, within 5 business days after it is deemed to have received notification in (b) above, replenish the payment and performance guarantee to those levels. Such replenish ment shall be made either by the wire transfer of funds in accordance with Provision No. C.24, or by the provision of a new letter of credit or amendment of the old letter of credit. If such replenishment is not made within 5 business days, the Contracting Officer may, on the 6th business day, without prior notice to the purchaser withhold deliveries under the contract and/or terminate the contract in whole or in part for default under Provision No. C.27.

C.24 Method of payments - general

(a) Notwithstanding any other contract provision, DOE may invoice the purchaser at any time for payment of monies due under the contract. These would include but not be limited to, interest, liquidated damages, amounts owing for any services provided for under the contract, and the difference between the contract price and price received on the resale of undelivered petroleum as defined in Provision No. C.27. If the invoice is for delinquent payments, interest shall accrue from the date of the delinquency and not from the invoice's deemed date of receipt by purchaser.

(b) All amounts payable by the purchaser in excess of $1,000.00 shall be paid by wire transfer as a deposit to the account of the U.S. Treasury through FEDWIRE. Information which must be included on each wire transfer is specified in Exhibit I, Instruction Guide for Funds Transfer.

(c) Payments in amounts less than $1,000.00 shall be by check made out to "U.S. Department of Energy." Such payments will be sent with documentation to identify the payer and purpose of the payment to: U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, Crude Oil Sales, Planning and Financial Management Division, Mail Stop PR-652, 900 Commerce Road East, New Orleans, Louisiana 70123.

(d) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(e) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

(f) If a purchaser disagrees with the amounts invoiced by DOE, the purchaser immediately shall pay the amount invoiced, and notify the Contracting Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute, and purchaser shall file a claim promptly in accordance with Provision No. C.34.

C.25 Interest

Amounts due and payable by the purchaser or its bank which are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Act of 1982 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the Federal Register.

C.26 Government options if payment is not received

(a) If any amount owed to DOE is not paid within the time deadlines specified by the applicable provisions, the Contracting Officer may, at his discretion, take the following actions either simultaneously or in any sequence he deems appropriate, with or without prior notice to the purchaser:

(1) Invoice the purchaser for the amount on which payment is delinquent or provide written notice that payment is delinquent;

(2) Draw against the letter of credit for all amounts due and delinquent;

(3) Apply any advance payment received against the amount due and delinquent;

(4) Withhold all or any part of future deliveries under the contract; and/or

(5) Terminate the contract, in whole or in part, for purchaser default, in accordance with Provision No. C.27.

(b) Any disputes will be settled by the Contracting Officer in accordance with Provision No. C.34.

C.27 Termination

(a) Immediate termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision No. C.33 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under subparagraph (b)(1)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under subparagraphs (b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with subparagraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for Default.

(1) Subject to the provisions of subparagraphs (b)(2) and (b)(3), the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability of DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision No. C.33 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision No. C.29 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or a NS issued after the date of default which specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with subparagraphs (2) and (3), the rights and obligations of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Such termination shall be without liability of the Government if such termination arises out of causes specified in (a)(1) or (b)(1) above, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex or express mail notice on the day after dispatch.

(3) Termination for the convenience of the Government shall not excuse the purchaser from liquidated damages accruing prior to the effective date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy which it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) above, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.34.

(h) The term "subcontractor" or "subcontractors" includes subcontractors at any tier.

C.28 Other Government remedies

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision No. C.27, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision No. C.29 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.29 Liquidated damages

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with paragraph (b) of Provision No. C.27 and paragraph (c) of Provision No. C.28.

(b) As provided in (a) above, liquidated damages will be assessed for each day or fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision No. C.27. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision No. C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.34.

C.30 Failure to perform under SPR contracts

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future contracts.

C.31 Government options in case of impossibility of performance

(a) In the event that DOE is unable to deliver petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(1) Terminate for the convenience of the Government under Provision No. C.27; or

(2) Offer different SPR crude oil streams or delivery times to the purchaser in substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price, if established for the same or similar crude oil streams in the most recent NS or determined after the opening of offers.

(c) DOE's obligation in such circumstances is to use its best efforts, and DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision No. 27.

C.32 Limitation of Government liability

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.33 Notices

(a) Any notices required to be given by one party to the contract to the other *in writing* shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested mail, express mail, telegram, or telex. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Procurement and Sales Division, Mail Stop PR-651, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.34 Disputes

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. Section 601 et seq.). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR 1-33.211.

(b) "Claim" means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding $50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's name _____

Signature _____

Title _____

(d) The Government shall pay to the purchaser, interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The Contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semi-annually in the **Federal Register.**

(e) The purchaser shall pay to DOE, interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision No. C.25 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.35 Assignment

The purchaser shall not make or attempt to make any assignment of a contract which incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.36 Order of precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

(a) The NA and written modifications thereto;

(b) The NS;

(c) Those provisions of the SSPs (as published in the **Federal Register**), made applicable to the contract by the NS;

(d) The instructions to the SPR Sales Offer Form; and

(e) The successful offer.

C.37 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government, with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

C.38 Officials not to benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

EXHIBITS:

A - SPR Sales Offer Form
B - Sample Notice of Sale
C - Solicitation, Offer and Award - Standard Form 33
D - SPR Crude Oil Stream Characteristics
E - SPR Delivery Point Data
F - Reserved
G - Offer Guarantee - Letter of Credit
H - Payment and Performance Guarantee - Letter of Credit
I - Instruction Guide for Funds Transfer Messages to Treasury
J - Form SPRPMO-F-6110.2-14 - SPR Crude Oil Delivery Report
K - Offer Guarantee Calculation Worksheet

EXHIBIT A.

Social Security Number or
Employer/Taxpayer ID

STRATEGIC PETROLEUM RESERVE
SALES OFFER FORM

NOTICE OF SALE NUMBER

OFFEROR INFORMATION

NAME

ADDRESS

CITY

STATE

ZIP CODE -

COUNTRY

TELEPHONE - -

BOND (Instruction 10)
$

AGENT INFORMATION

NAME

ADDRESS

CITY

STATE

ZIP CODE -

COUNTRY
U S A

TELEPHONE - -

INSTRUCTIONS

1. Identification Number

Individuals enter social security number Businesses enter employer/taxpayer ID. Include dashes.

2. Master Line Item (MLI)

Offerors may bid on one or more MLIs, but may not make alternate bids on separate master line items (i.e., the offer may not state 1,000,000 barrels from either MLI 001, or MLI 002).

3. Maximum MLI Quantity (MAXQ)

For each MLI offered against, offers shall state here, in thousands of barrels, the number of barrels which the offeror seeks to purchase on the MLI, regardless of delivery method. The maximum MLI quantity shall be not less than the DOE's minimum quantity as stated in the Notice of Sale (NS).

4. Delivery Line Items (DLI)

Applicable DLI delivery methods are as follows:

DLI A	Pipeline delivery from first terminal
DLI B,C,D	Tanker delivery from first terminal
DLI E,F,G	Barge delivery from first terminal
DLI H	Pipeline delivery from second terminal
DLI I,J,K	Tanker delivery from second terminal

DLI A and H nominally have a 30-day delivery period. Vessel DLIs B,E and I have ten day delivery periods nominally from the 1st to the 10th; C, F and J cover the 11th to the 20th; and D, G and K cover the 21st to the last day of the period of sale. Not all DLIs may be available on a particular MLI. For example, barges are allowed only at the Sun Terminal barge docks (with certain limited exceptions, see SSP No. C.8). Therefore, only MLI 004 and MLI 005 have DLIs E, F and G. Buyers are cautioned to read the NS carefully as it may alter the period of time covered by each DLI if the period of sale does not correspond to a calendar month. This is most likely to occur in the first sales cycle of a drawdown. For example, the NS may alter DLIs B, C, D, E, F, G, I, J and K to cover approximately 15 days instead of 10, or if the period of sale runs from the middle of one month to the middle of the next, DLIs B, E and I may be designated as covering the 15th to 25th of the first month, etc.

5. Unit Price (UP$$)

The offer shall state the offered price per barrel on each DLI for which the offer indicates a desired DLI quantity. The offer may state either the same unit price for different DLIs or different unit prices. DOE will award the highest price first. Prices may be stated to one-hundredths of a cent ($0.0001), but in no smaller fraction thereof.

6. Delivery Preference (P)

Where the offer has the same unit price for two or more DLIs, the offer may indicate the offeror's order of preference for delivery method and period (1st, 2nd, 3rd, etc.). If the offer does not indicate a preference, DOE will select the DLI(s) to be awarded at its discretion.

7. Desired DLI Quantity (DESQ)

Offers must indicate at least one desired DLI, stating(in thousands of barrels) the number of barrels which the offeror will accept by the delivery method and during the delivery period established for that DLI. An offeror may indicate a willingness to accept alternate delivery methods or delivery periods. An offeror may request all, part or none of the offer's maximum MLI quantity on any particular DLI. A total of all the offeror's desired DLI quantities should total at least the maximum MLI quantity, but could exceed the maximum MLI quantity if the offeror is willing to accept alternate delivery methods or periods. For example, the offer could state:

MLI: 001
Maximum MLI Quantity: 1,000
Desired DLI Quantities:
DLI 001B: 1,000
DLI 001C: 1,000
DLI 001D: 1,000

This would indicate the offeror would be willing to accept one million barrels of Bryan Mound sweet to be delivered to its vessels either from the 1st through the 10th, the 11th through the 20th, or 21st through the end of the month.

8. Minimum Contract Quantity (MINQ)

For each DLI on which an offer is made, the offeror should indicate his willingness to accept as little as DOE's specified minimum contract quantity for that DLI by marking the 'Y' block, or unwillingness to accept less than the DESQ for that DLI by marking the 'N' block. If neither 'Y' or 'N' is indicated, the offer will be evaluated as though the offeror had indicated a 'Y'. DOE only will award less than the offeror's desired DLI quantity if an offer is otherwise successful, but the quantity which DOE has available for award is less than said desired DLI quantity or award of the desired quantity would cause the offeror's MAXQ on the MLI to be exceeded.

9. Total Price

The offer shall calculate the total price (desired DLI quantity times unit price) for each DLI on which an offer is made. The offeror is reminded that DESQ is stated in thousands of barrels.

10. Offer Guarantee

The amount of the offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each MLI times the highest offer prices that the offeror would have to pay for that MLI if the offer is successful. To assist in this calculation, instructions and a worksheet are available at Exhibit K. Submission of the worksheet is not mandatory.

Social Security Number or Employer/Taxpayer ID

OFFER

NOTICE OF SALE NUMBER

MLI = MASTER LINE ITEM NUMBER (INSTRUCTION 2)
DLI = DELIVERY LINE ITEM (INSTRUCTIONS 4 AND 7)
UP$$ = UNIT PRICE (U.S. $)/BBL (INSTRUCTION 5)
P = PREFERENCE (INSTRUCTION 6)

MAXQ = MAXIMUM MLI QUANTITY (1000 BBL) (INSTRUCTION 3)
DESQ = DESIRED DLI QUANTITY (1000 BBL) (INSTRUCTION 7)
MINQ = MINIMUM CONTRACT QUANTITY (INSTRUCTION 8)

MLI 001 BRYAN MOUND SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
H						$
I						$
J						$
K						$

MLI 002 BRYAN MOUND SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
H						$
I						$
J						$
K						$

MLI 003 BRYAN MOUND MAYA

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$

MLI 004 WEST HACKBERRY SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
E						$
F						$
G						$

Social Security Number or Employer/Taxpayer ID

OFFER

NOTICE OF SALE NUMBER

MLI = MASTER LINE ITEM NUMBER (INSTRUCTION 2)
DLI = DELIVERY LINE ITEM (INSTRUCTIONS 4 AND 7)
UP$$ = UNIT PRICE (U.S. $)/BBL (INSTRUCTION 5)
P = PREFERENCE (INSTRUCTION 6)

MAXQ = MAXIMUM MLI QUANTITY (1000 BBL) (INSTRUCTION 3)
DESQ = DESIRED DLI QUANTITY (1000 BBL) (INSTRUCTION 7)
MINQ = MINIMUM CONTRACT QUANTITY (INSTRUCTION 8)

MLI 005 WEST HACKBERRY SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A		▲			$
B		▲			$
C		▲			$
D		▲			$
E		▲			$
F		▲			$
G		▲			$

MLI 006 WEEKS ISLAND SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A		▲			$
B		▲			$
C		▲			$
D		▲			$

MLI 007 BAYOU CHOCTAW SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A		▲			$
B		▲			$
C		▲			$
D		▲			$

MLI 008 BAYOU CHOCTAW SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A		▲			$
B		▲			$
C		▲			$
D		▲			$

By signing below the offeror certifies agreement without exception to all terms and conditions applicable to this sale and that the maximum potential contract amount (Instruction 10) is $

SIGNATURE: OFFEROR or AGENT

COMPANY NAME

Exhibit B—Sample Notice of Sale (NS)

1. NS No. DE–NS–96–84P010001 is issued (date) for sale of Strategic Petroleum Reserve (SPR) crude oil. All references to "Provision No." refer to the Standard Sales Provisions (SSPs) published in the Federal Register (date). All provisions are applicable to this sale except that provision No(s). (give number or numbers) are changed to read: (give changes). Additional provisions are hereby added (give new numbers which do not duplicate others in SSPs) which read: (give text).

Note.—Should the SSPs be extensively changed, the Notice of Sale (NS) may include, for information purposes only, a complete text of the SSPs as modified for the sale. Offerors are cautioned, however, that these complete text SSPs have *no* contractual status and that in the event of any inconsistencies, the published SSPs and the NS shall establish the terms and conditions for the sale.

2. Offers and offer guarantees must be received by 1:00 p.m. local time on (date) at addresses for mailed and handcarried offers given in SSPs.

3. Offerors must give names, addresses and telephone numbers, including area codes, for authorized representative of the offeror with whom the Government may conduct any necessary discussions.

4. Direct questions regarding NS to (name of individual), telephone (504) 734–4226. Collect calls will not be accepted.

5. Master Line Item (MLI) numbers given herein refer to those schedules attached as Exhibit A of the SSPs. The quantities for each MLI offered for sale are as follows: MLI 001: _____ bbls; MLI 002 not offered this sale; MLI 003: _____ bbls; MLI 004 :_____ bbls; MLI 005 not offered this sale; MLI 006: not offered this sale; MLI 007: _____ bbls; MLI 008: _____ bbls.

6. Offered delivery line items (DLI) and their maximums, i.e., offered DLIs and the Department of Energy's best estimates of the maximum amount of petroleum that can be moved by each delivery line item transportation system over the delivery period, are as follows (*see* provision No. B.16 of the SSPs):

7. Minimum quantities which will be awarded for each delivery line item (DLI) are as follows:

8. Delivery line item A, for pipeline delivery, is not offered under MLI 001. Offerors wishing to take delivery of MLI 001 by pipeline should offer to purchase quantities under delivery line items B, C, and D. If successful, purchasers may modify delivery method under Provision No. C.6.

9. Consideration to be paid for alteration of contract delivery modes in accordance with provision No. C.6 is as follows:

10. Applicable quality differentials are plus or minus _____ ¢ per degree API gravity, or part thereof, for sweet crude oil streams, and plus or minus _____ ¢ per one-tenth degree API gravity for sour crude oil streams.

11. Refinery recipients' "Superfund" tax liability is as follows:

EXHIBIT C

OMB Approved No. 9000-0008

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶	RATING	PAGE OF PAGES

2. CONTRACT NO	3. SOLICITATION NO	4. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO

7. ISSUED BY	CODE	8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried in the depository located in _____ until _____ *(Hour)* local time _____ *(Date)*

CAUTION – LATE Submissions, Modifications, and Withdrawals See Section L Provision No. 52.214-7 or 52.215-10 All offers are subject to all terms and conditions contained in this solicitation

10. FOR INFORMATION CALL ▶	A. NAME	B. TELEPHONE NO *(Include area code) (NO COLLECT CALLS)*

11. TABLE OF CONTENTS

(V)	SEC	DESCRIPTION	PAGE(S)	(V)	SEC	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

OFFER *(Must be fully completed by offeror)*

NOTE Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52.232-8)* ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)*	AMENDMENT NO	DATE	AMENDMENT NO	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO *(Include area code)*	☐ 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE – ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE	18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN ▶ ITEM *(4 copies unless otherwise specified)*

24. ADMINISTERED BY *(If other than Item 7)*	CODE	25. PAYMENT WILL BE MADE BY	CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

33-134

STANDARD FORM 33 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

☆ GPO : 1985 O - 491-248 (20232)

Exhibit D—SPR Crude Oil Stream Characteristics

Exhibit D

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Sweet

Terminals Phillips Terminal, Freeport, TX

ARCO Terminal, Texas City, TX

Crude

Specific Gravity	0.8449	Ni, ppm	5.1(5.3)*	ERVP, psia @ 100° F	5.60
API Gravity	36.0	V, ppm	2.4(3.2)*	Neutralization No.	0.06
Sulfur, Wt. %	0.32	Fe, ppm	4.3(4.1)*	H_2S, ppm (c)*	8.4
Nitrogen, Wt. %	0.122	Org. Cl, ppm (c)*	0.7	Mercaptans, ppm (c)*	0.4
Con. Car. Res., Wt. % (c)*	2.20	O.D. Color	11,450	Viscosity: 77° F	7.93 cSt 51.7 SUS
Pour Point, °F	40	UOP "K"	12.00	100° F	4.89 cSt 42.0 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1035 °F	Residuum
Vol. - mls	106.2	159.2	291.0	452.7	586.6	455.5	1020.1	416.2
Vol. %	3.0	4.6	8.3	13.0	16.8	13.0	29.2	11.9
Vol. Sum %	3.0	7.6	15.9	28.9	45.7	58.7	87.9	99.8
Wt. - grams	63.7	108.8	214.2	350.9	484.0	389.0	927.4	412.0
Wt. %	2.2	3.7	7.3	11.9	16.4	13.2	31.4	14.0
Specific Gravity	0.6	0.6635	0.7362	0.7752	0.8251	0.8540	0.9091	0.990
API Gravity		75.5	60.7	51.0	40.0	34.2	24.1	11.4
Sulfur, Wt. %		0.003	0.002	0.016	0.08	0.26	0.54	1.02
Mercaptans, ppm		9.9	<1	<1	<1			
H_2S, ppm		<1	10.6	27.1	26.9			
Organic Cl, ppm		2.2	3.8	3.2				
Aniline Point, °F				127.4	145.4	166.4	192.9	
Neutralization No.					0.04	0.09		
Cetane Index					47.09	52.72		
Naphthalenes, vol. %					4.51	8.74		
Smoke point					16.8	14.7		
Nitrogen, Wt. %					0.0004	0.007	0.142	0.668
Viscosity:								
cSt (SUS) 77° F					7.40(50.0)			
100° F					1.85(32.1)	4.93(42.2)		
130° F						3.37(37.3)	25.07(119.9)	
180° F							10.03(59.3)	
210° F								884.6(4126)
250° F								247.3(1156)
Freezing Point, °F					-31.0			
Cloud Point, °F						26	118	
Pour Point, °F						25	100	
Ni, ppm							Not Detectable	37.6
V, ppm							Not Detectable	23.0
Fe, ppm							Not Detectable	28.9
Con. Car. Res., Wt. %							--	15.7

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	70.9	52.6
Motor Octane Number:	67.2	48.6

Whole crude lead content: 0.006 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		43.1	23.8	26.0	30.8
Total Iso-paraffins		36.0	25.5	22.6	0.6
Total Aromatics		2.4	5.6	21.7	33.8
Total Naphthenes		18.5	45.1	25.9	2.1
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.7	32.6
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.4	0.1	0.0	0.0
	C5	18.5	0.4	0.0	0.0
	C6	22.4	4.2	0.0	0.0
	C7	0.8	14.4	0.5	0.0
	C8	0.0	4.8	6.6	0.0
	C9	0.0	0.0	8.9	0.1
	C10	0.0	0.0	7.6	1.6
	C11	0.0	0.0	2.4	12.5
	C12	0.0	0.0	0.1	16.7
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	8.9	0.2	0.0	0.0
	C6	24.2	2.1	0.0	0.0
	C7	2.9	12.7	0.2	0.0
	C8	0.0	10.5	3.2	0.0
	C9	0.0	0.0	10.6	0.0
	C10	0.0	0.0	8.4	0.4
	C11	0.0	0.0	0.2	0.2
Aromatics:	C6	2.0	0.7	0.0	0.0
	C7	0.4	4.3	0.6	0.1
	C8	0.0	0.7	7.4	0.0
	C9	0.0	0.0	8.4	0.7
	C10	0.0	0.0	4.7	12.7
	C11	0.0	0.0	0.5	16.7
	C12	0.0	0.0	0.0	3.7
Naphthenes:	C5	2.1	0.1	0.0	0.0
	C6	14.3	8.2	0.1	0.0
	C7	2.1	24.7	1.6	0.0
	C8	0.0	12.0	11.5	0.0
	C9	0.0	0.0	7.1	0.1
	C10	0.0	0.0	5.5	1.8
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	13.8
i-Butane	11.9
n-Butane	39.4
i-Pentane	18.0
n-Pentane	15.1
C_6+	1.8

Whole Crude B-T-X

Component	Vol. %
Benzene	0.150
Toluene	0.375
Ethylbenzene	0.020
Xylenes	0.034

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Sour

Terminals Phillips Terminal, Freeport, TX

ARCO Terminal, Texas City, TX

Crude

Specific Gravity	0.8683	Ni, ppm	11.3(15.4)*	ERVP, psia @ 100° F	3.40
API Gravity	31.5	V, ppm	50.9(60.6)*	Neutralization No.	0.08
Sulfur, Wt. %	1.60	Fe, ppm	Not Detectable	H_2S, ppm (c)*	0.8
Nitrogen, Wt. %	0.149	Org. Cl, ppm (c)*	1.1	Mercaptans, ppm (c)*	12.1
Con. Car. Res., Wt. % (c)*	4.81	O.D. Color	25,540	Viscosity: 77° F	11.4 cSt 63.7 SUS
Pour Point, °F	0	UOP "K"	11.85	100° F	7.44 cSt 50.2 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1061 °F	Residuum
Vol. - mls	23.8	133.6	271.6	522.8	634.3	459.2	1160.7	597.4
Vol. %	0.6	3.5	7.0	13.6	16.5	11.9	30.1	15.5
Vol. Sum %	0.6	4.1	11.1	24.7	41.2	53.1	83.2	98.7
Wt. - grams	14.3	90.1	197.0	403.6	518.8	395.1	1074.0	618.9
Wt. %	0.4	2.7	5.9	12.1	15.5	11.8	32.1	18.5
Specific Gravity	0.6	0.6743	0.7254	0.7720	0.8179	0.8605	0.9253	1.036
API Gravity		78.4	63.6	51.8	41.5	32.9	21.4	5.1
Sulfur, Wt. %		0.002	0.005	0.046	0.42	1.14	2.08	3.88
Mercaptans, ppm		24.4	41.3	74.2	<1			
H_2S, ppm		2.1	2.3	5.4	10.9			
Organic Cl, ppm		1.6	4.7	6.2				
Aniline Point, °F				126.7	144.9	160.4	178.9	
Neutralization No.					0.02	0.01		
Cetane Index					49.81	50.63		
Naphthalenes, vol. %					3.95	11.02		
Smoke point					16.6	14.2		
Nitrogen, Wt. %					0.0009	0.017	0.166	0.696
Viscosity:								
cSt (SUS) 77° F					2.26(33.4)			
100° F					1.79 (<32.0)	4.80(41.8)		
130° F						3.20(37.0)	29.30(138.7)	
180° F							11.05(62.9)	
210° F								9002(41,985)
250° F								1737(8120)
Freezing Point, °F					-31.0			
Cloud Point, °F						24	112	
Pour Point, °F						20	95	
Ni, ppm							Not Detectable	83.3
V, ppm							Not Detectable	328
Fe, ppm							Not Detectable	Not Detectable
Con. Car. Res., Wt. %							--	26.0

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	64.6	41.8
Motor Octane Number:	60.7	40.5

Whole crude lead content: 0.002 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		45.9	34.3	30.3	33.6
Total Iso-paraffins		39.4	31.6	25.2	0.5
Total Aromatics		2.7	7.9	24.3	36.4
Total Naphthenes		12.0	26.2	16.6	1.6
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.5	27.9
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.3	0.0	0.0	0.0
	C5	17.2	0.4	0.0	0.0
	C6	26.9	5.8	0.1	0.0
	C7	1.4	19.5	0.9	0.0
	C8	0.0	8.6	7.2	0.0
	C9	0.0	0.0	10.5	0.1
	C10	0.0	0.0	8.8	2.1
	C11	0.0	0.0	2.8	13.7
	C12	0.0	0.0	0.1	17.8
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	6.7	0.2	0.0	0.0
	C6	27.6	2.6	0.0	0.0
	C7	5.1	15.2	0.4	0.0
	C8	0.0	13.3	3.5	0.0
	C9	0.0	0.4	12.2	0.0
	C10	0.0	0.0	9.0	0.4
	C11	0.0	0.0	0.1	0.1
Aromatics:	C6	1.9	0.8	0.0	0.0
	C7	0.8	5.6	0.9	0.1
	C8	0.0	1.5	7.1	0.0
	C9	0.0	0.0	10.5	1.3
	C10	0.0	0.0	5.0	13.0
	C11	0.0	0.0	0.9	17.5
	C12	0.0	0.0	0.0	4.4
Naphthenes:	C5	2.0	0.1	0.0	0.0
	C6	8.5	4.8	0.0	0.0
	C7	1.5	13.2	1.1	0.0
	C8	0.0	8.1	6.0	0.0
	C9	0.0	0.0	4.8	0.1
	C10	0.0	0.0	4.7	1.5
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	6.8
i-Butane	7.8
n-Butane	32.7
i-Pentane	22.6
n-Pentane	24.0
C_6+	6.0

Whole Crude B-T-X

Component	Vol. %
Benzene	0.123
Toluene	0.420
Ethylbenzene	0.035
Xylenes	0.071

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Maya Terminals Phillips Terminal, Freeport, TX

Crude

Specific Gravity	0.9166	Ni, ppm	58.4(62.4)*	ERVP, psia @ 100° F	5.15
API Gravity	22.9	V, ppm	263 (263)*	Neutralization No.	0.22
Sulfur, Wt. %	3.13	Fe, ppm	2.9 (0.9)*	H_2S, ppm (c)*	1.1
Nitrogen, Wt. %	0.356	Org. Cl, ppm (c)*	0.3	Mercaptans, ppm (c)*	17.7
Con. Car. Res., Wt. % (c)*	11.19	O.D. Color	69.450	Viscosity: 77° F	128.11 cSt 593 SUS
Pour Point, °F	0	UOP "K"	11.75	100° F	61.78 cSt 287 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1014 °F	Residuum
Vol. - mls	71.0	140.3	220.2	421.6	473.8	404.2	1104.7	1317.2
Vol. %	1.7	3.4	5.3	10.2	11.4	9.7	26.6	31.7
Vol. Sum %	1.7	5.1	10.4	20.6	32.0	41.7	68.3	100.0
Wt. - grams	42.6	94.8	159.9	325.4	390.9	351.4	1034.7	1405.5
Wt. %	1.1	2.5	4.2	8.5	10.3	9.2	27.2	36.9
Specific Gravity	0.6	0.6755	0.7263	0.7719	0.8251	0.8693	0.9366	1.067
API Gravity		78.0	63.3	51.8	40.0	31.3	19.6	1.1
Sulfur, Wt. %		0.010	0.018	0.291	0.95	2.00	2.97	5.52
Mercaptans, ppm		82.0	113.6	127.6	<1			
H_2S, ppm		2.9	2.4	5.3	5.0			
Organic Cl, ppm		1.8	1.9	1.8				
Aniline Point, °F				128.7	141.7	151.9	163.4	
Neutralization No.					0.03	0.06		
Cetane Index					47.09	48.14		
Naphthalenes, vol. %					4.16	10.98		
Smoke point					16.0	13.3		
Nitrogen, Wt. %					0.0016	0.030	0.232	0.786
Viscosity:								
cSt (SUS) 77° F					2.33(33.7)			
100° F					1.86(32.1)	4.92(42.1)		
130° F						3.32(37.1)	33.89(159.3)	
180° F							12.23(67.1)	
210° F								495874(2.31x10^6)
250° F								42772 (199962)
Freezing Point, °F					-31.9			
Cloud Point, °F						24	106	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	169
V, ppm							Not Detectable	711
Fe, ppm							Not Detectable	2.4
Con. Car. Res., Wt. %							0.45	30.0

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	64.4	41.5
Motor Octane Number:	60.7	41.3

Whole crude lead content: 0.008 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND MAYA

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		48.0	33.5	30.8	34.2
Total Iso-paraffins		37.2	31.9	22.1	0.5
Total Aromatics		3.1	7.6	25.0	36.4
Total Naphthenes		11.7	27.0	17.0	1.3
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	5.1	27.6
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.1	0.0	0.0	0.0
	C4	1.1	0.0	0.0	0.0
	C5	20.2	0.7	0.0	0.0
	C6	25.4	4.5	0.1	0.0
	C7	1.3	19.0	0.9	0.0
	C8	0.0	9.1	6.2	0.0
	C9	0.0	0.1	10.2	0.1
	C10	0.0	0.0	8.7	1.5
	C11	0.0	0.0	4.5	11.1
	C12	0.0	0.0	0.2	21.4
Iso-paraffins:	C4	0.2	0.0	0.0	0.0
	C5	8.5	0.3	0.0	0.0
	C6	24.0	2.5	0.0	0.0
	C7	4.5	14.2	0.4	0.0
	C8	0.0	13.5	3.0	0.0
	C9	0.0	1.4	9.9	0.0
	C10	0.0	0.0	8.8	0.5
	C11	0.0	0.0	0.0	0.0
Aromatics:	C6	2.0	0.8	0.0	0.0
	C7	1.1	5.2	0.9	0.1
	C8	0.0	1.6	7.8	0.1
	C9	0.0	0.0	9.3	1.3
	C10	0.0	0.0	5.7	10.9
	C11	0.0	0.0	1.3	18.9
	C12	0.0	0.0	0.0	5.2
Naphthenes:	C5	2.0	0.2	0.0	0.0
	C6	8.4	4.3	0.1	0.0
	C7	1.4	13.1	1.1	0.0
	C8	0.0	9.4	6.7	0.0
	C9	0.0	0.0	4.3	0.1
	C10	0.0	0.0	4.8	1.1
	C11	0.0	0.0	0.1	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.1
Propane	13.0
i-Butane	8.9
n-Butane	40.8
i-Pentane	15.0
n-Pentane	16.6
C_6+	5.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.110
Toluene	0.313
Ethylbenzene	0.029
Xylenes	0.057

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR West Hackberry Sweet Terminal Sun Marine Terminal, Nederland, TX

Crude					
Specific Gravity	0.8343	Ni, ppm	1.6(1.8)*	ERVP, psia @ 100° F	4.15
API Gravity	38.1	V, ppm	2.7(3.4)*	Neutralization No.	0.14
Sulfur, Wt. %	0.28	Fe, ppm	2.6(3.4)*	H_2S, ppm (c)*	0.5
Nitrogen, Wt. %	0.090	Org. Cl, ppm (c)*	0.9	Mercaptans, ppm (c)*	0.7
Con. Car. Res., Wt. % (c)*	1.81	O.D. Color	8,240	Viscosity: 77° F	4.88 cSt 41.9 SUS
Pour Point, °F	25	UOP "K"	12.00	100° F	3.60 cSt 37.9 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1050° F	Residuum
Vol. - mls	191.8	253.7	379.5	546.8	664.2	499.5	1131.5	382.1
Vol. %	4.7	6.3	9.4	13.5	16.4	12.3	27.9	9.4
Vol. Sum %	4.7	11.0	20.4	33.9	50.3	62.6	90.5	99.9
Wt. - grams	115.1	173.0	280.8	424.9	548.4	427.4	1028.5	378.7
Wt. %	3.4	5.1	8.3	12.6	16.2	12.6	30.4	11.2
Specific Gravity	0.6	0.6819	0.7400	0.7770	0.8256	0.8556	0.9090	0.991
API Gravity		76.0	59.7	50.6	39.9	33.9	24.2	11.3
Sulfur, Wt. %		0.020	0.001	0.004	0.04	0.23	0.53	1.09
Mercaptans, ppm		<1	<1	<1	4.5			
H_2S, ppm		<1	2.4	2.4	<1			
Organic Cl, ppm		1.5	4.0	4.1				
Aniline Point, °F				122.9	142.9	164.5	192.4	
Neutralization No.					0.05	0.10		
Cetane Index					46.91	52.23		
Naphthalenes, vol. %					4.96	9.52		
Smoke point					16.8	15.8		
Nitrogen, Wt. %					0.0005	0.007	0.130	0.604
Viscosity:								
cSt (SUS) 77° F					2.33(33.6)			
100° F					1.85(32.1)	4.95(42.2)		
130° F						3.37(37.3)	25.96(123.7)	
180° F							10.38(60.5)	
210° F								701.9(3274)
250° F								204.96(958)
Freezing Point, °F					-32.8			
Cloud Point, °F						22	120	
Pour Point, °F						20	100	
Ni, ppm							Not Detectable	16.2
V, ppm							Not Detectable	30.3
Fe, ppm							Not Detectable	30.4
Con. Car. Res., Wt. %							--	16.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	68.5	53.3
Motor Octane Number:	63.9	30.8

Whole crude lead content: 0.004 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEST HACKBERRY SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		43.9	24.9	26.1	30.1
Total Iso-paraffins		35.1	24.4	20.7	0.7
Total Aromatics		3.6	8.9	24.2	35.1
Total Naphthenes		17.5	41.8	24.4	2.3
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	4.6	31.7
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.7	0.0	0.0	0.0
	C5	20.3	0.3	0.0	0.0
	C6	21.3	4.1	0.0	0.0
	C7	0.6	14.9	0.5	0.0
	C8	0.0	5.6	6.7	0.0
	C9	0.0	0.0	8.9	0.1
	C10	0.0	0.0	7.3	2.2
	C11	0.0	0.0	2.5	11.7
	C12	0.0	0.0	0.1	16.1
Iso-paraffins:	C4	0.2	0.0	0.0	0.0
	C5	9.5	0.1	0.0	0.0
	C6	22.5	1.7	0.0	0.0
	C7	2.9	12.3	0.1	0.0
	C8	0.0	9.4	2.8	0.0
	C9	0.0	0.8	9.1	0.0
	C10	0.0	0.0	8.5	0.5
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	3.1	1.2	0.0	0.0
	C7	0.5	6.6	1.0	0.1
	C8	0.0	1.0	9.0	0.0
	C9	0.0	0.0	8.9	1.3
	C10	0.0	0.0	4.6	13.9
	C11	0.0	0.0	0.7	16.4
	C12	0.0	0.0	0.0	3.4
Naphthenes:	C5	2.9	0.1	0.0	0.0
	C6	13.1	8.8	0.1	0.0
	C7	1.5	22.8	1.6	0.0
	C8	0.0	10.0	10.4	0.0
	C9	0.0	0.0	7.4	0.2
	C10	0.0	0.0	4.9	2.1
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	9.7
i-Butane	7.8
n-Butane	35.4
i-Pentane	17.4
n-Pentane	21.5
C_6+	8.2

Whole Crude B-T-X

Component	Vol. %
Benzene	0.308
Toluene	0.652
Ethylbenzene	0.025
Xylenes	0.051

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR West Hackberry Sour Terminal Sun Marine Terminal, Nederland, TX

Crude					
Specific Gravity	0.8599	Ni, ppm	6.5(6.6)*	ERVP, psia @ 100° F	4.10
API Gravity	33.1	V, ppm	25.9(24.7)*	Neutralization No.	0.12
Sulfur, Wt. %	1.40	Fe, ppm	5.8(6.1)*	H_2S, ppm (c)*	1.2
Nitrogen, Wt. %	0.140	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	23.7
Con. Car. Res., Wt. % (c)*	3.75	O.D. Color	18,300	Viscosity: 77° F	8.88 cSt 54.9 SUS
Pour Point, °F	<-5	UOP "K"	11.90	100° F	6.27 cSt 46.4 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1050° F	Residuum
Vol. - mls	128.5	192.7	324.5	591.7	709.0	523.3	1265.3	635.9
Vol. %	2.9	4.4	7.4	13.6	16.3	12.0	29.0	14.6
Vol. Sum %	2.9	7.3	14.7	28.3	44.6	56.6	85.6	100.2
Wt. - grams	77.1	130.4	235.2	455.4	579.0	449.6	1166.5	646.7
Wt. %	2.1	3.5	6.3	12.1	15.4	12.0	31.1	17.2
Specific Gravity	0.6	0.6766	0.7249	0.7696	0.8167	0.8591	0.9219	1.017
API Gravity		77.6	63.7	52.4	41.8	33.2	22.0	7.6
Sulfur, Wt. %		0.020	0.010	0.040	0.32	1.02	1.96	3.48
Mercaptans, ppm		<1	43.1	120.4	41.4			
H_2S, ppm		16.8	3.7	3.2	<1			
Organic Cl, ppm		1.9	1.6	1.7				
Aniline Point, °F				128.0	145.8	162.5	180.5	
Neutralization No.					0.04	0.07		
Cetane Index					50.36	51.11		
Naphthalenes, vol. %					3.97	11.49		
Smoke point					20.1	15.3		
Nitrogen, Wt. %					0.0005	0.013	0.146	0.558
Viscosity:								
cSt (SUS) 77° F					2.24(33.4)			
100° F					1.78 (<32.0)	4.87(42.0)		
130° F						3.32(37.1)	27.65(131.3)	
180° F							10.82(62.0)	
210° F								2210(10309)
250° F								529.6(2476)
Freezing Point, °F					-31.9			
Cloud Point, °F						22	104	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	38.2
V, ppm							Not Detectable	143
Fe, ppm							Not Detectable	35.2
Con. Car. Res., Wt. %							--	21.8

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	62.9	43.6
Motor Octane Number:	59.6	40.9

Whole crude lead content: 0.025 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEST HACKBERRY SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		46.7	34.0	30.2	37.2
Total Iso-paraffins		39.1	32.5	23.2	0.5
Total Aromatics		2.9	7.5	25.3	36.2
Total Naphthenes		11.3	25.9	16.8	1.7
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.4	24.3
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.5	0.0	0.0	0.0
	C5	17.2	0.3	0.0	0.0
	C6	28.0	5.4	0.0	0.0
	C7	0.9	20.5	0.7	0.0
	C8	0.0	7.8	7.4	0.0
	C9	0.0	0.0	10.4	0.1
	C10	0.0	0.0	8.4	2.6
	C11	0.0	0.0	3.2	14.1
	C12	0.0	0.0	0.1	20.3
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	6.4	0.1	0.0	0.0
	C6	28.3	2.4	0.0	0.0
	C7	4.3	16.1	0.2	0.0
	C8	0.0	13.2	3.5	0.0
	C9	0.0	0.8	10.7	0.0
	C10	0.0	0.0	8.8	0.5
	C11	0.0	0.0	0.1	0.0
Aromatics:	C6	2.0	0.8	0.0	0.0
	C7	0.9	5.6	0.8	0.1
	C8	0.0	1.1	8.3	0.0
	C9	0.0	0.0	10.0	1.6
	C10	0.0	0.0	5.3	12.5
	C11	0.0	0.0	0.9	17.8
	C12	0.0	0.0	0.0	4.2
Naphthenes:	C5	2.0	0.1	0.0	0.0
	C6	8.3	4.7	0.1	0.0
	C7	1.1	13.2	0.8	0.0
	C8	0.0	7.9	6.4	0.0
	C9	0.0	0.0	4.7	0.1
	C10	0.0	0.0	4.8	1.6
	C11	0.0	0.0	0.0	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.2
Propane	9.0
i-Butane	7.6
n-Butane	34.6
i-Pentane	20.6
n-Pentane	24.6
C_6+	3.4

Whole Crude B-T-X

Component	Vol. %
Benzene	0.147
Toluene	0.454
Ethylbenzene	0.034
Xylenes	0.051

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Weeks Island Sour

Terminals DOE St. James Terminal, St. James, LA
LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8821	Ni, ppm	14.0(15.8)*	ERVP, psia @ 100° F	4.85
API Gravity	28.9	V, ppm	39.2(42.5)*	Neutralization No.	0.19
Sulfur, Wt. %	1.32	Fe, ppm	0.7 (1.5)*	H_2S, ppm (c)*	0.3
Nitrogen, Wt. %	0.216	Org. Cl, ppm (c)*	0.3	Mercaptans, ppm (c)*	6.3
Con. Car. Res., Wt. % (c)*	4.97	O.D. Color	25,150	Viscosity: 77° F	18.02 cSt 89.5 SUS
Pour Point, °F	15	UOP "K"	11.85	100° F	11.43 cSt 63.9 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1029° F	Residuum
Vol. - mls	117.7	132.0	252.0	455.6	642.3	526.7	1330.0	835.3
Vol. %	2.7	3.1	5.9	10.6	15.0	12.3	31.0	19.5
Vol. Sum %	2.7	5.8	11.7	22.3	37.3	49.6	80.6	100.1
Wt. - grams	70.6	91.3	185.7	354.3	533.0	458.2	1233.7	855.3
Wt. %	1.9	2.4	4.9	9.3	14.1	12.1	32.6	22.6
Specific Gravity	0.6	0.6918	0.7370	0.7777	0.8298	0.8699	0.9276	1.024
API Gravity		73.0	60.5	50.4	39.0	31.2	21.0	6.7
Sulfur, Wt. %		0.054	0.004	0.043	0.29	0.85	1.58	3.00
Mercaptans, ppm		10.2	17.4	41.8	9.0			
H_2S, ppm		<1	2.5	2.3	<1			
Organic Cl, ppm		2.8	2.1	1.7				
Aniline Point, °F				119.6	137.4	152.9	173.3	
Neutralization No.					0.06	0.07		
Cetane Index					45.31	47.98		
Naphthalenes, vol. %					4.75	11.77		
Smoke point					15.5	12.7		
Nitrogen, Wt. %					0.0006	0.013	0.173	0.692
Viscosity:								
cSt (SUS) 77° F					2.31(33.7)			
100° F					1.85(32.1)	5.17(42.9)		
130° F						3.48(37.6)	30.96(146.1)	
180° F							11.58(64.8)	
210° F								4201(19592)
250° F								935.8(4375)
Freezing Point, °F					-33.7			
Cloud Point, °F						20	104	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	69.8
V, ppm							Not Detectable	188
Fe, ppm							Not Detectable	6.5
Con. Car. Res., Wt. %							0.34	21.5

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	65.8	50.0
Motor Octane Number:	62.4	47.8

Whole crude lead content: 0.014 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEEKS ISLAND SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		41.0	27.7	26.5	29.7
Total Iso-paraffins		36.6	27.5	21.7	0.6
Total Aromatics		4.4	10.0	27.3	36.5
Total Naphthenes		18.0	34.7	20.9	1.7
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.5	31.5
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.2	0.0	0.0	0.0
	C5	14.4	0.3	0.0	0.0
	C6	25.4	4.7	0.0	0.0
	C7	1.1	16.3	0.7	0.0
	C8	0.0	6.4	6.5	0.0
	C9	0.0	0.0	9.0	0.1
	C10	0.0	0.0	7.8	1.7
	C11	0.0	0.0	2.4	12.2
	C12	0.0	0.0	0.1	15.7
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	5.0	0.1	0.0	0.0
	C6	26.9	2.0	0.0	0.0
	C7	4.6	13.3	0.2	0.0
	C8	0.0	11.2	3.1	0.0
	C9	0.0	0.9	10.0	0.0
	C10	0.0	0.0	8.3	0.4
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	3.7	1.4	0.0	0.0
	C7	0.7	7.4	1.2	0.1
	C8	0.0	1.2	9.8	0.1
	C9	0.0	0.0	10.1	1.5
	C10	0.0	0.0	5.5	13.0
	C11	0.0	0.0	0.6	17.7
	C12	0.0	0.0	0.0	4.3
Naphthenes:	C5	2.9	0.1	0.0	0.0
	C6	13.1	7.3	0.1	0.0
	C7	2.0	18.8	1.5	0.0
	C8	0.0	8.5	9.2	0.0
	C9	0.0	0.0	5.7	0.2
	C10	0.0	0.0	4.2	1.5
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.2
Propane	13.2
i-Butane	8.0
n-Butane	32.4
i-Pentane	17.9
n-Pentane	21.6
C_6+	6.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.197
Toluene	0.458
Ethylbenzene	0.025
Xylenes	0.048

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bayou Choctaw Sweet

Terminals DOE St. James Terminal, St. James, LA

LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8424	Ni, ppm	4.4(4.4)*	ERVP, psia @ 100° F	8.10
API Gravity	36.5	V, ppm	7.0(7.4)*	Neutralization No.	0.12
Sulfur, Wt. %	0.40	Fe, ppm	2.1(3.3)*	H_2S, ppm (c)*	2.2
Nitrogen, Wt. %	0.127	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	3.8
Con. Car. Res., Wt. % (c)*	2.53	O.D. Color	14,000	Viscosity: 77° F	6.86 cSt 48.2 SUS
Pour Point, °F	30	UOP "K"	12.05	100° F	4.90 cSt 42.1 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1051 °F	Residuum
Vol. - mls	259.0	236.7	403.7	600.9	755.8	565.4	1456.9	570.0
Vol. %	5.3	4.9	8.3	12.4	15.6	11.7	30.1	11.8
Vol. Sum %	5.3	10.2	18.5	30.9	46.5	58.2	88.3	100.1
Wt. - grams	155.4	161.6	298.0	466.2	622.4	482.2	1322.0	568.9
Wt. %	3.8	4.0	7.3	11.4	15.3	11.8	32.4	13.9
Specific Gravity	0.6	0.6826	0.7382	0.7759	0.8235	0.8528	0.9074	0.998
API Gravity		75.8	60.2	50.9	40.3	34.4	24.4	10.3
Sulfur, Wt. %		0.004	0.002	0.011	0.06	0.26	0.54	1.26
Mercaptans, ppm		8.0	<1	<1	23.0			
H_2S, ppm		<1	6.3	15.4	<1			
Organic Cl, ppm		2.9	1.8	1.3				
Aniline Point, °F				126.0	144.8	167.3	195.4	
Neutralization No.					0.04	0.08		
Cetane Index					47.62	53.05		
Naphthalenes, vol. %					4.40	9.12		
Smoke point					18.6	16.6		
Nitrogen, Wt. %					0.0003	0.006	0.136	0.630
Viscosity:								
cSt (SUS) 77° F					2.33(33.7)			
100° F					1.85(32.1)	4.89(42.0)		
130° F						3.33(37.1)	25.93(123.6)	
180° F							10.42(60.6)	
210° F								1227.9(5727)
250° F								326.4 (1526)
Freezing Point, °F					-31.9			
Cloud Point, °F						28	114	
Pour Point, °F						25	100	
Ni, ppm							Not Detectable	31.9
V, ppm							Not Detectable	53.3
Fe, ppm							Not Detectable	23.6
Con. Car. Res., Wt. %							--	18.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	68.4	51.7
Motor Octane Number:	64.1	48.2

Whole crude lead content: 0.006 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BAYOU CHOCTAW SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		41.6	25.4	27.0	30.9
Total Iso-paraffins		36.4	24.7	21.6	0.9
Total Aromatics		3.1	7.7	23.2	34.3
Total Naphthenes		18.9	42.0	24.2	2.6
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.1	31.4
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.2	0.0	0.0	0.0
	C5	17.3	0.3	0.0	0.0
	C6	22.4	4.1	0.0	0.0
	C7	0.7	14.6	0.5	0.0
	C8	0.0	6.4	6.2	0.0
	C9	0.0	0.0	9.1	0.1
	C10	0.0	0.0	7.8	2.4
	C11	0.0	0.0	3.2	11.5
	C12	0.0	0.0	0.1	16.8
Iso-paraffins:	C4	0.1	0.0	0.0	0.0
	C5	8.1	0.1	0.0	0.0
	C6	24.5	2.0	0.0	0.0
	C7	3.6	12.2	0.2	0.0
	C8	0.0	9.4	2.7	0.0
	C9	0.0	0.9	10.1	0.1
	C10	0.0	0.0	8.5	0.6
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	2.6	0.9	0.0	0.0
	C7	0.6	5.6	0.8	0.1
	C8	0.0	1.2	7.8	0.0
	C9	0.0	0.0	8.7	1.4
	C10	0.0	0.0	4.9	13.2
	C11	0.0	0.0	0.9	16.2
	C12	0.0	0.0	0.0	3.4
Naphthenes:	C5	2.7	0.2	0.0	0.0
	C6	14.2	8.3	0.1	0.0
	C7	2.0	23.0	1.6	0.0
	C8	0.0	10.5	10.3	0.0
	C9	0.0	0.1	6.7	0.2
	C10	0.0	0.0	5.3	2.3
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	11.6
i-Butane	8.8
n-Butane	36.5
i-Pentane	18.1
n-Pentane	20.3
C_6+	4.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.202
Toluene	0.494
Ethylbenzene	0.033
Xylenes	0.064

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bayou Choctaw Sour

Terminals DOE St. James Terminal, St. James, LA
LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8573	Ni, ppm	8.0(7.5)*	ERVP, psia @ 100° F	5.80
API Gravity	33.6	V, ppm	27.7(27.6)*	Neutralization No.	0.15
Sulfur, Wt. %	1.41	Fe, ppm	Not Detectable (1.5)*	H_2S, ppm (c)*	5.1
Nitrogen, Wt. %	0.144	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	4.2
Con. Car. Res., Wt. % (c)*	3.64	O.D. Color	15,900	Viscosity: 77° F	8.38 cSt 53.2 SUS
Pour Point, °F	5	UOP "K"	11.90	100° F	5.88 cSt 45.2 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1055° F	Residuum
Vol. - mls	180.5	184.6	329.3	585.5	731.4	535.9	1311.8	611.0
Vol. %	4.0	4.1	7.4	13.1	16.4	12.0	29.4	13.7
Vol. Sum %	4.0	8.1	15.5	28.6	45.0	57.0	86.4	100.1
Wt. - grams	108.3	124.8	238.9	451.5	598.6	461.0	1213.4	626.9
Wt. %	2.8	3.3	6.2	11.8	15.6	12.0	31.7	16.4
Specific Gravity	0.6	0.6761	0.7255	0.7712	0.8184	0.8603	0.9250	1.026
API Gravity		77.8	63.5	52.0	41.4	33.0	21.5	8.2
Sulfur, Wt. %		0.010	0.010	0.039	0.32	1.01	2.10	3.57
Mercaptans, ppm		<1	50.3	<1	7.1			
H_2S, ppm		31.3	3.8	32.4	<1			
Organic Cl, ppm		1.7	1.7	2.1				
Aniline Point, °F				125.8	144.3	160.5	179.4	
Neutralization No.					0.04	0.07		
Cetane Index					49.62	50.79		
Naphthalenes, vol. %					4.06	11.37		
Smoke point					19.1	14.0		
Nitrogen, Wt. %					0.0006	0.013	0.154	0.582
Viscosity:								
cSt (SUS) 77° F					2.25(33.5)			
100° F					1.79 (<32.0)	4.85(41.9)		
130° F						3.32(37.1)	29.45(139.4)	
180° F							11.30(63.7)	
210° F								2864(13359)
250° F								665.9(3113)
Freezing Point, °F					-31.9			
Cloud Point, °F						22	106	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	45.6
V, ppm							Not Detectable	168
Fe, ppm							Not Detectable	8.9
Con. Car. Res., Wt. %							--	22.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	63.5	44.6
Motor Octane Number:	59.4	42.5

Whole crude lead content: 0.022 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BAYOU CHOCTAW SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		45.0	33.4	29.5	36.1
Total Iso-paraffins		40.3	33.5	23.1	0.6
Total Aromatics		2.5	7.6	26.6	36.6
Total Naphthenes		12.2	25.5	16.3	1.9
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	4.5	24.8
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.4	0.0	0.0	0.0
	C5	15.0	0.4	0.0	0.0
	C6	28.6	5.6	0.0	0.0
	C7	1.0	19.4	0.7	0.0
	C8	0.0	7.9	6.9	0.0
	C9	0.0	0.0	10.2	0.2
	C10	0.0	0.0	8.5	2.6
	C11	0.0	0.0	3.1	14.1
	C12	0.0	0.0	0.1	19.2
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	5.7	0.1	0.0	0.0
	C6	29.8	2.7	0.0	0.0
	C7	4.8	16.0	0.3	0.0
	C8	0.0	13.7	3.4	0.0
	C9	0.0	1.1	10.9	0.0
	C10	0.0	0.0	8.4	0.6
	C11	0.0	0.0	0.1	0.0
Aromatics:	C6	2.0	0.7	0.0	0.0
	C7	0.5	5.5	0.9	0.1
	C8	0.0	1.4	8.6	0.1
	C9	0.0	0.0	10.5	1.8
	C10	0.0	0.0	5.6	12.8
	C11	0.0	0.0	1.0	17.8
	C12	0.0	0.0	0.0	4.1
Naphthenes	C5	2.0	0.1	0.0	0.0
	C6	9.0	4.8	0.1	0.0
	C7	1.2	13.4	1.0	0.0
	C8	0.0	7.1	6.0	0.0
	C9	0.0	0.0	4.3	0.1
	C10	0.0	0.0	4.9	1.7
	C11	0.0	0.0	0.0	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.1
Propane	10.8
i-Butane	7.7
n-Butane	31.5
i-Pentane	19.8
n-Pentane	24.2
C_6+	5.9

Whole Crude B-T-X

Component	Vol. %
Benzene	0.134
Toluene	0.428
Ethylbenzene	0.037
Xylenes	0.064

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Exhibit E—SPR Delivery Point Data

Phillips Terminal (Formerly Seaway Terminal)

(Data as of December 31, 1986)

Location: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)
Crude Oil Streams: Bryan Mound Sweet, Bryan Mound Sour, and Bryan Mound Maya
Delivery Points: Phillips Terminal marine dock facility number 2
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 3 Docks: Nos. 1, 2 and 3
Maximum Length Overall (LOA): 750 feet during daylight and 615 feet during hours of darkness
Maximum Beam: 107 feet
Maximum Draft: 37.5 feet; subject to change due to the weather and silting conditions
Maximum Air Draft: None
Maximum Deadweight Tons (DWT): Maximum DWT at Dock No. 1 is 50,000 DWT. Dock Nos. 2 an 3 can accommodate up to 80,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: Dock No. 1 has the capability to load barges of a minimum 30,000-barrel capacity. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.
Customary Anchorage: Freeport Harbor sea bouy approximately 4.5 miles from the terminal.

ARCO Pipeline Company, Texas City Terminal

(Data as of December 31, 1986)

Location: Docks 11 and 12, Texas City Harbor, Galveston County, Texas
Crude Oil Streams: Bryan Mound Sweet and Bryan Mound Sour
Delivery Points: ARCO Pipe Line Company Marine Docks (11 and 12) and connections to local commercial pipelines
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 2 Docks; Nos. 11 and 12
Maximum Length Overall (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 468 feet.
Maximum Beam: Dock 11–108 feet; Dock 12–220 feet
Maximum Draft: 39.6 feet; subject to change due to weather and silting conditions
Maximum Air Draft: None
Maximum Deadweight Tons (DWT): 150, 000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: None
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements.
Customary Anchorage: Bolivar Roads (breakwater) or Galveston sea buoy.

Sun Terminal

(Data as of December 31, 1986)

Location: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar)
Crude Oil Streams: West Hackberry Sweet, West Hackberry Sour
Delivery Points: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 5 Docks: Nos. 1, 2, 3, 4 and 5
Maximum Length Overall (LOA): 1000 feet
Maximum Beam: 145 feet
Maximum Draft: 40 feet fresh water
Maximum Air Draft: 136 feet
Maximum Deadweight Tons (DWT): Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 130,000 DWT. Vessels larger than 85,000 DWT are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: 3 Barge Docks: A, B and C. Each capable of handling barges up to 25,000 barrels capacity. Tankship Dock No. 1 has barge loading capability. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.
Customary Anchorage: South of Sabine Bar Buoy, also at Sabine Bar for vessels with draft of 39 feet or less. Short-term anchorage for vessels of less than 40 foot draft in turning basin.

DOE St. James Terminal

(Data as of December 31, 1986)

Location: St. James Parish, Louisiana (30 miles southwest of Baton Rouge on the west bank of the Mississippi River at mile-marker 158.3)
Crude Oil Streams: Bayou Choctaw Sweet, Bayou Choctaw Sour, Weeks Island Sour
Delivery Points: St. James Terminal marine dock facility and LOCAP Terminal (connections to Capline interstate pipeline system and local commercial pipelines)
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 2 Docks: Nos. 1 and 2
Maximum Length Overall (LOA): 940 feet
Maximum Beam: None
Maximum Draft: 45 feet
Maximum Air Draft: 153 feet less the river stage
Maximum DWT: 100,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: None
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements. Terminal can provide suitable contacts.
Customary Anchorage: Grandview Reach approximately 11 miles from the terminal.

Exhibit F—[Reserved]

Exhibit G—Offer Guarantee—Letter of Credit

Procurement and Sales Division, Mail Stop PR–651, Project Management Office, Strategic Petroleum Reserve, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer

_____

(name and address of offeror)
we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for an amount not to exceed U.S. $_____, effective immediately as an offer guarantee for the offer of our customer dated _____ in response to the U.S. Department of Energy's Notice of Sale dated _____ for the sale of Strategic Petroleum Reserve petroleum. Liability under this Letter of Credit shall commence upon the date set by the Notice of Sale, including any amendments thereto, for receipt of offers and expires on the twenty-first day thereafter. We agree that our obligation shall not be impaired by any extensions of the date set for receipt of offers, notice of such extension being hereby waived; provided, that such waiver of notice shall not apply to extensions extending more than thirty (30) calendar days beyond the period originally established for receipt of offers.

Funds under this Letter of Credit are available to the U.S. Department of Energy by its draft or drafts drawn on ourselves and accompanied by a manually signed statement of a duly authorized official of the U.S. Department of Energy stating the following:

This drawing of U.S. $_____ — (U.S. dollar amount expressed in word form)

_____

against your Letter of Credit Numbered _____, dated _____ is due the U.S. Government because of the failure of

_____

(name of offeror)

to honor its offer to enter into a contract for the purchase of petroleum from the Strategic Petroleum Reserve, in accordance with the U.S. Government's Notice of Sale dated _____ and the applicable Standard Sales Provisions (10 CFR Part 625, Appendix A). Upon receipt of the U.S. Department of Energy's draft and accompanying statement, either by hand or mail, at our office located at _____, we will honor the draft and make payment by 3 p.m. Eastern Standard Time of the next business day following receipt of the draft by wire transfer to the account of the U.S. Treasury through the Federal Reserve Communications System. Each wire transfer shall be formatted in accordance with prescribed Treasury requirements as shown in Exhibit I of the Standard Sales Provisions, 10 CFR Part 625, Appendix A.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit to _____

(address and any applicable reference)

_____

_____.

Yours Truly,

_____

Authorized Signature.

Exhibit H

Payment and Performance Guarantee—Letter of Credit

Procurement and Sales Division, Mail Stop PR–651, Project Management Office, Strategic Petroleum Reserve, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer

_____

(name and address)

we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for about U.S. $_____ — _____ (the U.S. dollar amount expressed in word form) effective immediately and expiring at our office located at _____

_____

(address)

one hundred and twenty (120) days from the date of issuance of this Letter of Credit, relative to an offer by our customer dated _____, to purchase Strategic Petroleum Reserve petroleum.

Funds under this Letter of Credit are available to the U.S. Department of Energy by its draft or drafts drawn on ourselves. Such draft or drafts may be transmitted by telex or U.S. Mail and shall contain either a statement that:

This drawing is due to the U.S. Department of Energy under your letter of Credit number _____ for

_____

(customer's name). Payment of U.S. $_____ to be made by wire transfer to U.S. Department of Energy on

_____

(date)

under contract number DE–SC96–_____. SPRCODR No. _____ for delivery of _____ barrels of oil at U.S. $_____ per barrel, plus/minus $_____ per barrel gravity adjustment. The wire draft should include our FEDWIRE number and other pertinent wire information as follows: Transfer to TREAS Code 021030004 TREAS NYC/(89000201) Dept of Energy (SPRO) U.S. $_____ payment for the sale of crude oil under contract No. DE–SC96–_____. SPRCODR No. _____. Deposit Account 89X0233.91.

or a statement that:

This drawing is due the U.S. Department of Energy under your letter of Credit number _____ for

_____

(customer's name).

Payment of U.S. $_____ to be made by wire transfer to U.S. Department of Energy because of failure of company to accept delivery of petroleum under contract number DE–SC96–_____ at the time specified in the contract resulting in damages due under the contract in that amount. The wire draft should include our FEDWIRE number and other pertinent wire information as follows: Transfer to TREAS Code 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) U.S. $_____ payment for damages incurred by failure to accept delivery under contract number DE–SC96–_____. Deposit Account 89X0233.91.

or both.

We also will honor drafts presented over the Federal Reserve Bank's FEDWIRE system, provided that each such draft contains either a statement that:

Third Party sender, re your LOC#

_____

(Letter of Credit No.)

for

_____

(customer name)

Third Party receiver, Transfer to TREAS Code 021030004 TREAS NYC (89000201) Dept of Energy (SPRO) $_____ payment due on

_____

(date)

for sale of oil under contract No. _____. SPRCODR No. _____ for _____ bls @ $_____/bl ± _____ degrees at $0._____ gravity adjustment and $_____ for delivery damages. Deposit Account 89X0233.91.

or a statement that:

Third Party sender, re your LOC#

(Letter of Credit No.)

for _____

(customer name)

Third Party receiver, Transfer to TREAS Code 021030004 TREAS NYC/89000201) DEPT OF ENERGY (SPRO) $_____ payment due for damages from failure to perform in accordance with contract No. _____. Deposit Account 89X0233.91

or other wire message containing the relevant information. The wire draft should include our FEDWIRE number and other information pertinent to a request for a wire transfer of funds over FEDWIRE, as follows:

_____

For drafts presented by telex or FEDWIRE, the U.S. Government's invoice (including supporting documents) shall be forwarded to us by regular mail.

The U.S. Department of Energy may make multiple drawings totalling up to the amount of funds indicated in the first paragraph as available under this Letter of Credit.

Upon receipt of the U.S. Department of Energy's draft and accompanying statement, we will honor the draft and make payment by 3 p.m. Eastern Standard Time on the date stated in the draft (or the next business day if the stated date does not fall on a regular business day), by wire transfer of funds over FEDWIRE to account number 021030004 of the U.S. Treasury through the Federal Reserve Communications System. Each wire transfer of funds shall be formatted in accordance with prescribed U.S. Treasury requirements as shown in Exhibit I of the Standard Sales Provisions, 10 CFR Part 625, Appendix A.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit to _____

(address and any applicable reference)

_____

Yours truly,

_____

Authorized signature.

Exhibit I—Instruction Guide for Funds Transfer Messages to Treasury

The following instructions provide specific information which is required so that a funds (wire) transfer message can be transmitted to the Department of Treasury. The funds transfer message format is shown in Attachment 1. A narrative description of each item on the funds transfer message follows:

Line 1

Item 1—*Priority Code*—The priority code will be provided by the sending bank. (Note: Some Federal Reserve District banks may not require this item.).

Line 2

Item 2—*Treasury Department Code*—The 9-digit identifier "021030004" is the routing symbol of the Treasury. This item is a constant and is required for all funds transfer messages sent to Treasury.

Item 3—*Type Code*—The type code will be provided by the sending bank (will be a 10 or 12).

Line 3

Item 4—*Sending Bank Code*—This 9-digit identifier will be provided by the sending bank.

Item 5—*Class*—The class field may be used at the option of the sending bank. (Note: Some Federal Reserve Districts prohibit use of this field.)

Item 6—*Reference Number*—The reference number will be inserted by the sending bank to identify the transaction.

Item 7—*Amount*—The amount must include the dollar sign and the appropriate punctuation including cents digits. This item will be inserted by the sending bank.

Line 4

Item 8—*Sending Bank Name*—The telegraphic abbreviation which corresponds to Item 4 will be provided by the sending bank.

Line 5

Items 9, 10, and 11—*Treasury Department, Name, Agency Location Code, Agency Number*—This item is of critical importance. It must appear on the funds transfer message in the precise manner as stated to allow for the automated processing and classification of funds transfer message to Treasury for credit to the Department of Energy. This item is comprised of a rigidly formatted, left justified, nonvariable sequence of characters as follows:

TRES NYC/(89000201) Dept. of Energy (SPRO).

Item 12—*Payment Identification*—The payment identification should be furnished by the remitter in the following manner:

Lines 6 and 7

For contracts payments, either the constant "Payment for the Sale of Crude Oil Under Contract #_____. SPRCODR #_____" or "Payment for Damages Incurred by Failure to Accept Delivery Under Contract #_____" will be inserted. For offer guarantees, the constant "Offer Guarantee for the Sale of Crude Oil Under NS #_____" for *(Name), (Taxpayer ID or Social Security Number)* will be inserted.

Line 8

The constant "Deposit Account 89X0233" will be inserted.

Important Note: Line Nos. 2 and 5 are edited by the Federal Reserve Bank. If the wire transfer message is not formatted as prescribed above, the message will be rejected by the FED Bank and returned to the sending bank.

SAMPLE OF FUNDS TRANSFER MESSAGE FORMAT FOR SPR OIL SALE

02			
To	Type		
021030004	10		
From	Class	Ref	Amount
011000390		0650	$500,000.00

Ordering Bank and Related Data

FIRST BOS

TREAS NYC/(89000201) DEPT OF ENERGY (SPRO)

PAYMENT FOR THE SALE OF CRUDE OIL UNDER

CONTRACT # SPRCODR #

DEPOSIT ACCOUNT 89X0233

Attachment 1 to Exhibit I

EXHIBIT J

STRATEGIC PETROLEUM RESERVE
CRUDE OIL DELIVERY REPORT

1. SALES CONTRACT NUMBER

2. TERMINAL REPORT NUMBER

3. CARGO NUMBER

4. DATE DELIVERED

5. TRANSPORTATION MODE ☐ TANKER ☐ BARGE ☐ PIPELINE

6. ACCEPTANCE POINT ☐ ORIGIN ☐ DESTINATION

7. SHIPPING SPR SITE/TERMINAL

8. PURCHASER-NAME AND ADDRESS

9 CARRIER

10. CONTRACT LINE ITEM MLI	10. CONTRACT LINE ITEM DLI	11 DESCRIPTION OF CRUDE OIL AND GROSS BBLS	11A. API GRAVITY	11B. TOTAL SULPHUR %	12. DEL'D NET BBLS @ 60°F	13. UNIT PRICE	14. AMOUNT DUE

15. QUALITY ADJUSTMENT — INCREASE/(DECREASE)

15A. NET GRAVITY ADJUSTMENT FROM 15B(5) _____.____°

15B. CALCULATION OF GRAVITY ADJUSTMENT

(1) ADVERTISED API GRAVITY	
(2) DELIVERED API GRAVITY	
(3) VARIANCE - (2)minus(1) PLUS/(MINUS)	
(4) ALLOWABLE VARIANCE	
(5) NET VARIANCE-(3)minus(4) +/(−)	

16. NET AMOUNT DUE

17. THE DELIVERED NET BARRELS, UNIT PRICE, QUALITY ADJUSTMENT, AND NET AMOUNT DUE HAVE BEEN VERIFIED.

SIGNATURE: _____

INVENTORY MANAGER

18. REMARKS

19. VESSEL DATA

19A. VESSEL NAME

19B. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD		
VESSEL ARRIVED IN ROADS		
FIRE LINE ASHORE		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD		
CARGO HOSES CONNECTED		
COMMENCED LOADING		
STOPPED LOADING		
RESUMED LOADING		
FINISHED LOADING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (ACTUAL OR ESTIMATED)		

20. RECEIPT IS ACKNOWLEDGED OF THE QUANTITY AND QUALITY SHOWN HEREON:

DATE RECEIVED: _____

AGENT: _____

BY: _____

NAME TYPED/PRINTED

21. GOVERNMENT INSPECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE (VESSEL CARGO) (PIPELINE SHIPMENT) WAS INSPECTED, DELIVERED AND ACCEPTED AS SHOWN HEREON.

DATE_____ SIGNATURE _____

NAME TYPED/PRINTED

22. I CERTIFY THAT THE TIME STATEMENT SHOWN HEREON IS CORRECT

SIGNATURE_____

MASTER OF VESSEL

SPRPMO-F-6110.2-14 1/87

Exhibit K.—Offer Guarantee Calculation Worksheet

MLI: _____

Column	MAXQ (thousands/ bbls) (A)	Unit price (dollars) (B)	DLI (C)	DESQ (thousands/ bbls) (D)	MINQ (thousands/ bbls) (E)	Total DLI price (thousands/ dollars) (F)	Bond factor (G)	Product (dollars) (H)
Row:								
1							x50	
2							x50	
3							x50	
4							x50	
5							x50	
6							x50	
7							x50	
Total								

1. Using separate worksheet for each MLI offered against, from the SPR Sales Offer Form, enter the MLI maximum quantity offered on (expressed in thousands of barrels) in Column (A), Row 1.

2. Starting with the highest DLI unit price offered on the MLI from the SPR Sales Offer Form (and the highest preference if the unit prices of two or more DLIs are the same) enter the unit price in Row 1, Column (B); the DLI letter in Row 1, Column (C); the DLI desired quantity is Row 1, Column (D) (in thousands of barrels) and the minimum quantity in Row 1, Column (E). (The minimum quantity is either the Government's minimum contract quantity, if the offer indicates the offeror will accept as little as that amount, or the desired quantity, if the offeror indicates he will accept no less than that amount. *see* instructions for the SPR Sales Offer Form.)

3. If either the desired quantity in Column (D), or the minimum quantity in Column (E) exceeds the maximum quantity in Column (A), you have made an error either on this form or the offer form and should recheck your figures.

4. Multiply the price in Row 1, Column (B) times the desired quantity in Column (D) (as expressed in thousands) and enter the total DLI price in Column (F).

5. Multiply the total DLI price in Column (F) times the factor in Column (G) and enter the product in Column (H). The factor is 5% of 1000.

6. Subtract the DLI desired quantity in Row 1, Column (D) from the maximum quantity in Row 1, Column (A). Enter the result in Row 2, Column (A). If the result is zero, go to step 11.

7. Enter the next highest unit price for the MLI from the offer form in Row 2, Column (B). Enter the DLI letter, desired quantity, and minimum quantity in their respective columns. If there is a maximum quantity remaining in Row 2, Column (A), but no more DLI offers, or the minimum quantity in Row 2, Column (E) exceeds the maximum quantity, you may have made an error and should recheck your figures.

8. Multiply the lesser of the remaining maximum quantity in Column (A), or the desired quantity in Column (D) times the unit price (even if this quantity is less than MINQ) and enter the resulting total DLI price in Column (F).

9. Multiply Column (F) times the factor in Column (G) and enter the product in Column (H).

10. Repeat steps 6–9 for the next higher unit price until maximum quantity remaining is zero, then go to step 11.

11. Sum the amounts in Column (H) and enter the total in Row 8, Column (H). Sum this amount for all the worksheets. If the sum of all the worksheets is less than $10,000,000, enter the sum in the spaces marked offer bond on the SPR Sales Offer Form. If the sum exceeds $10,000,000, then enter $10,000,000 on the offer form. Obtain an offer guarantee in the amount indicated on the offer form and submit with the offer. These worksheets need not be submitted with the offer and should be retained for your files.

[FR Doc. 88-12014 Filed 6-2-88; 8:45 am]

BILLING CODE 6450-01-D

federal register

Friday
June 3, 1988

Part V

Department of Housing and Urban Development

Office of the Secretary and Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 596

Enterprise Zone Development; Proposed Rule and Notice of Concurrent Delegation of Authority

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 596

[Docket No. R-88-1392; FR-1913]

Enterprise Zone Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Title VII (Enterprise Zone Development) of the Housing and Community Development Act of 1987 (Pub. L. 100–242). This Title authorizes the Secretary of The Department of Housing and Urban Development (HUD) to designate not more than 100 zones based entirely on rank order of distress. The Secretary is authorized to waive HUD regulations, promote coordination and expedite consideration of all HUD programs within the designated zones.

The purpose of the program is to encourage business to invest in distressed areas, thereby creating jobs and assisting in the economic revitalization of these areas.

DATE: Comments must be received by July 5, 1988.

ADDRESSES: *Comments on Rule:* Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

Comments on information collection: Comments on the information collection requirements contained in this proposed rule should be submitted to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20504, attention Desk Officer for HUD. They should contain the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–6588. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION

I. Background

Legislation to authorize Enterprise Zones has been a goal of the Administration since its inception. Since 1982, several Enterprise Zone Bills have been introduced on behalf of the Administration, providing significant tax incentives as well as the potential for waiver of Federal regulations.

In his 1988 Legislative Message, President Reagan stated: "More than half of the states have set up their own enterprise zones, even without Federal incentives. These zones have created new jobs and spurred billions of dollars in capital investment. Their success is testimony to the power of this concept and is just a small indication of how much could be accomplished if Federal incentives were added to those of States and localities. Adding Federal incentives would make existing zones far more economically attractive and successful and would also encourage more State and local zones. Accordingly, I am renewing my call to the Congress to take up effective Federal Enterprise Zone legislation which will complement the State Programs."

The Housing and Community Development Act of 1987 included Title VII, Enterprise Zone Development as a new program.

II. Program Description

General

The Secretary of HUD may designate up to 100 Enterprise Zones. One third of the Enterprise Zones must be in rural areas.

Designation of the Enterprise Zones will be based solely on the rank order of distress of the zones. The only exception will be if the Secretary determines that the Course of Action proposed for the area is inadequate.

Eligibility

To be eligible for zone designation, the area must:

(1) Have a continuous boundary and a minimum population of 4,000 if located in a metropolitan statistical area or in a jurisdiction with a population of 50,000 or greater, or 1,000 if located in a rural area, or any population if located entirely in an Indian Reservation;

(2) Be located in a UDAG eligible jurisdiction; and

(3) Be of pervasive poverty, unemployment and general distress.

In addition, an urban area must have:

(1) An unemployment rate of at least 1.5 times the national unemployment rate;

(2) A poverty rate of at least 20 percent; and either

(3) Low income or population decline:

(a) Have at least 70 percent of the households with incomes below 80 percent of the median income of households of the local jurisdiction; or

(b) Have a population decline of 20 percent or more between 1970 and 1980.

A rural area must meet at least one of the four criteria enumerated in 1, 2, 3(a), and 3(b).

Designation Process

A local and State Government must jointly request designation of an area which they certify meets the eligibility requirements.

The nomination request must include a "Course of Action" which has been developed to reduce the various burdens borne by employers or employees in the area. The Course of Action must include at least four of the following:

A reduction of tax rates or fees applying within the enterprise zone;

An increase in the level of public services, or in the efficiency of the delivery of public services within the enterprise zone;

Actions to reduce, remove, simplify or streamline paperwork requirements within the enterprise zone;

Involvement in the program by public authorities or private entities, organizations, neighborhood associations and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees and residents of the nominated area;

The giving of special contract preference to businesses owned and operated by members of any minority; and

The gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

Enterprise Zone Benefits

The Secretary of HUD is authorized to waive HUD regulations in designated zones and shall:

1. Promote the coordination of all HUD Programs in Enterprise Zones; and

2. Expedite the consideration of HUD programs in Enterprise Zones.

Special Issue

No guidance is provided in the Act with regard to the Enterprise Zone

benefits discussed as "Coordination of Housing and Urban Development Programs in Enterprise Zones." The Department intends to be expansive in its application of this provision and is interested in specific comments in all three areas: e.g. which regulations impede the achievement of Enterprise Zone objectives and should be considered for possible waiver? Which programs have the most potential for facilitating Enterprise Zone objectives and should receive expedited consideration and coordination? In what manner should this expedited consideration and coordination be carried out?

III. Public Comment

The proposed rule will provide the opportunity for the public to comment on the specifics of the Department's intentions to administer the provisions of this title.

Under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o) no rule promulgated by the Department may become effective until after passage of the first period of 30 calendar days of continuous session of Congress after the day on which the rule is published as final. This section 7(o) constraint of the Congressional calendar applies for the rest of the year.

Section 701(a)(4)(A) of the Act requires that HUD issue regulations addressing the enterprise zone requirements not later than four months following the date of enactment of the Act. Given this Congressional mandate to implement the program expeditiously, and the section 7(o) restraints described above, the comment period provided for this rule is limited to 30 days to permit time for review of the public comments and development of a final rule at least 30 days before Congress adjourns for the year.

IV. Other Matters

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, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street SW. Washington, DC 20410

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President of February 17, 1981. Analysis of the rule indicated 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, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets. If Congress passes tax legislation to augment the authority under which this rule is promulgated, the implementing rule for such legislation would constitute a major economic impact and the Department would prepare a Regulatory Impact Analysis at that time.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Under 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. While the Enterprise Zone Program will permit small entities to apply for designation and to benefit from their participation in the program, the impact on these entities is a function of the operation of Title VII of the Housing and Community Development Act of 1987, and is not caused by the rulemaking, which merely provides the machinery for designations of zones under the statutory criteria.

This rule is not listed in the Department's semiannual agenda of regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15960.

List of Subjects in 24 CFR Part 596

Enterprise zones, Economic development, Housing and urban development, Community development.

Accordingly, for the reasons set out in the preamble, Title 24 of the Code of Federal Regulations is proposed to be amended by adding a new part 596, as set forth below.

PART 596—ENTERPRISE ZONE DEVELOPMENT

Subpart A—General Provisions

Sec.
596.1 Applicability and scope.
596.2 Objective and purpose.
596.3 Definitions.
596.4 Secretarial review and enterprise zone designation.
596.5 Waivers.
596.6 Consultation with other Federal agencies.

Subpart B—Area Requirements

596.100 General.
596.101 Eligibility requirements.

Subpart C—State and Local Government Actions

596.200 Nominations by State and local governments.
596.201 Nomination of Indian reservations.
596.202 Course of action.

Subpart D—Zone Designation Process

596.300 Nomination for designation of an enterprise zone.
596.301 HUD action and review of nominations for zone designation.
596.302 Selection factors for designation of nominated zones.
596.303 Zone designation of rural areas.
596.304 Number of zones designated.

Subpart E—Post Zone Designation

596.400 Monitoring [Reserved].
596.401 Revocation of enterprise zone designation.
596.402 Evaluation and reporting.

Subpart F—Waiver or Modification of Rules

596.500 Requests for waivers or modifications.
596.501 Waiver or modification of HUD rules in enterprise zones.

Subpart G—Coordination of Housing and Urban Development Programs

596.600 Coordination of HUD programs.

Authority: Title VII, Housing and Community Development Act of 1987 (42 U.S.C. 11501–11505); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 596.1 Applicability and scope.

(a) This part covers policies and procedures applicable to enterprise zones authorized under Title VII of the Housing and Urban Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988).

(b) This part includes provisions relating to area requirements, the process of nomination of enterprise zones and the designation of enterprise zones by HUD

§ 596.2 Objective and purpose.

The purpose of this part is to provide for the establishment of enterprise zones in order to stimulate the creation of new jobs, particularly for disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas primarily by providing or encouraging:

(a) Tax incentives at the State and local levels;

(b) Specific actions to reduce, remove, simplify, or streamline governmental requirements at the Federal, State, and local levels; and

(c) Improved local services and an increase in the economic stake of enterprise zone residents in their own community and in its development, particularly through the increased involvement of private, local, and neighborhood organizations.

§ 596.3 Definitions.

The following definitions apply to this part:

Act means Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988).

Course of Action means a strategy developed and agreed to by the appropriate State and local governments to reduce the various burdens borne by employers and employees in an area determined to meet the eligibility requirements of the statute. The course of action must include four out of six provisions identified in § 596.202(b), and must include written commitments from the local government and State in which the nominated area is located that they will follow the course of action.

Designated enterprise zone means an area which has been designated by the Secretary as an enterprise zone and within which the provisions of sections 703, 704, and 705 of the Act will apply.

HUD means the United States Department of Housing and Urban Development.

Indian reservation means an area determined to be a reservation by the Secretary of the Interior. As with the UDAG program, for the purposes of the Enterprise Zones program, the term "Indian reservation" will include former Indian reservations in Oklahoma, as determined by the Secretary of the Interior.

Indian tribal government means the governing body of any tribe, band, community, village, or group of Indians, or Alaska Natives which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise substantial governmental functions.

Local government means any county, city, town, township, parish, village, the District of Columbia, or other general purpose political subdivision of a State, or combination thereof, which is an eligible applicant for assistance under the Urban Development Action Grant program under 24 CFR 570.451(e).

Metropolitan Statistical Area is an area designated by the Office of Management and Budget as a freestanding Metropolitan Statistical Area or a Primary Metropolitan Statistical Area, where both primary and consolidated Metropolitan Statistical Areas exist.

Nominated enterprise zone means an area which has been nominated by a State and by a unit or units of local government for designation as an enterprise zone.

Rural area means either:

(a) An area located within the jurisdiction of a unit or units of local government with a population of less than 50,000 and which is wholly located outside of a Metropolitan Statistical Area; or

(b) An area located within the jurisdiction of a unit or units of local government not meeting the criteria of paragraph (a) of this section which is determined by the Secretary, after consultation with the Secretary of Commerce, to be a rural area.

Secretary means the Secretary of Housing and Urban Development.

State means any State of the United States and the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other of the possessions of the United States.

§ 596.4 Secretarial view and enterprise zone designation.

(a) *Review and Designation.* The Secretary of Housing and Urban Development will review nominations submitted by State and local governments to determine the adequacy of courses of action submitted in accordance with the requirements of the Act. The Secretary will designate a maximum of 100 enterprise zones. The designations shall be based entirely upon the rank order of distress, except that the Secretary will not designate a zone if it is determined to have an inadequate course of action.

(b) *Rural Set Aside.* Of the areas designated by the Secretary pursuant to paragraph (a) of this section, at least one-third shall be located in rural areas.

(c) *Period of Designation.* The designation of an area as an enterprise zone shall remain in full effect during the period beginning in the effective date of designation by the Secretary and ending on the earliest of:

(1) December 31 of the 24th year after such date;

(2) The date designated by the State and local governments as set forth in their nomination; or

(3) The date of Secretary revokes the designation of the zone pursuant to § 596.401.

§ 596.5 Waivers.

The Secretary may waive any requirement of this part not required by statute when it is determined that the application of the requirement would adversely affect the purposes of the Act.

§ 596.6 Consultation with other Federal agencies.

The Secretary will consult with other Federal agencies regarding enterprise zones as follows:

(a) *Data.* The Secretary will consult with the Director of the Bureau of the Census or the Commissioner of the Bureau of Labor Statistics, as appropriate, with regard to the data required for determinations of eligibility of areas nominated as enterprise zones under this part.

(b) *Designation Process.* Before the designation of nominated enterprise zones by the Secretary, the Secretary will consult with the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration.

(c) *Indian Reservations.* The Secretary will consult with the Secretary of the Interior regarding the designation of nominated enterprise zones located within Indian reservations.

(d) *Regulatory Waivers.* The Secretary may consult with other Federal agencies, as appropriate, regarding requests for waivers and modifications submitted to HUD or to such other agenices under § 596.500.

Subpart B—Area Requirements

§ 596.100 General.

(a) *Eligibility.* An area is eligible for nomination by a State and one or more local governments, and for designation under the requirements of this part if the area:

(1) Meets the population and boundary tests set forth in § 596.101(a);

(2) Is located wholly within the jurisdiction of one or more units of local government which meet the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974;

(3) Meets the tests of pervasive poverty, unemployment, and general distress set forth in § 596.101(c);

(4) Meets the additional tests of unemployment, poverty, and low income or population loss in § 596.101(d); and

(5) Contains no portion of an area which is included either in an area previously designated as a federal enterprise zone under this part or as

part of another area nominated for designation as a federal enterprise zone.

(b) *Data usage for eligibility determinations.* The tests of population and distress set forth in § 596.101 are to be computed based on data from the Bureau of Census and from the Bureau of Labor Statistics. The data shall be comparable as to point or period of time and as to methodology. Appropriate data will be identified by a Notice published in the **Federal Register.**

(c) *Usage of statistical area boundaries.* While the boundary of an enterprise zone does not have to coincide with the boundaries of census statistical areas, the eligibility requirements set forth in § 596.101 will be computed using the lowest level of census statistical areas for which appropriate census data are available and which can reliably be used to perform the tests. The various tests describe the appropriate level of census statistical areas for making the determination regarding each test (i.e., tract, block group, block, minor civil divisions, or enumeration district). The census statistical areas must be the smallest group to entirely contain the nominated zone.

§ 596.101 Eligibility requirements.

To be eligible for nomination and designation as an enterprise zone, an area must meet each of the following criteria:

(a) *Population and physical location.* The area must:

(1) Be located in its entirety within the jurisdiction of the unit or units of local government nominating the area;

(2) Have a continuous boundary;

(3) Have a population of at least 4,000, unless:

(i) It is located in a rural area, in which case it must have a population of at least 1,000; or

(ii) It is located on an Indian reservation, in which case there is no minimum population requirement.

No maximum population size or geographic size is stipulated for an enterprise zone because HUD does not want to limit the flexibility of local governments and states in defining the zones to meet local goals for stimulating economic development.

(b) *Meeting the requirement for federal assistance under the Urban Development Action Grant program.* Eligibility for designation of an enterprise zone under this part is limited to areas located within the jurisdiction of one or more units of local government eligible for assistance under the Urban Development Action Grant (UDAG) program. The jurisdiction must be identified to meet the minimum distress tests or meet the requirements for pocket of poverty based on designations considered current for the purpose of enterprise zone eligibility. Local governments must have been determined eligible by HUD to participate in the UDAG program under 24 CFR 570.453 or 570.466(a), and eligibility has not been subsequently withdrawn by HUD. Nominations from local governments that do not meet this requirement will not be accepted for processing by HUD.

(c) *Pervasive poverty, unemployment, and general distress.* An area must evidence conditions of pervasive poverty, unemployment, and general distress.

(1) *Pervasive poverty and unemployment.* The conditions of poverty must be reasonably distributed throughout the entire area. The poverty rate shall be described by citing nationally and locally available statistics on poverty. The unemployment situation shall be demonstrated through provision of information on job loss, plant closings, or other unemployment indicators which have affected the area.

(2) *General distress.* The area must be an area of general distress. General distress shall be evidenced by describing conditions of distress existing within the area, other than those of poverty and unemployment, such as abandoned housing, infrastructure deficiencies, or other appropriate indicators of conditions of general distress.

(d) *Tests for unemployment, poverty, low income, or population loss.* A nominated enterprise zone in an urban area must meet the requirements of unemployment and poverty, and either low income or population loss. The data used to make tests will be expressed to the nearest tenth of a percent. The criteria are as follows:

(1) *Unemployment.* The unemployment rate for the smallest number of block groups or enumeration districts which entirely contain the nominated enterprise zone must be at least one and one half times the national rate for the same period. Unemployment will be based upon decennial census data adjusted by the most recently available annual average unemployment estimates from the Bureau of Labor Statistics for the smallest jurisdiction which includes the nominated zone.

(2) *Poverty.* The poverty rate for each census tract that contains any part of the nominated enterprise zone must be at least 20 percent under the most recent available census data. If census tracts are not defined, evidence of the 20 percent rate of poverty is required at the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas. The poverty rate will be determined using the estimated number of persons in families or as unrelated individuals who had incomes below the poverty thresholds for the decennial census. Census tracts (or other comparable areas) containing fewer than 100 persons as of the decennial census will not be tested under § 596.101(c)(1) and (d)(2);

(3) *Low income.* For the smallest number of block groups or enumeration districts which entirely contain the nominated enterprise zone, at least 70 percent of the households must be below 80 percent of the median household income for the local government(s). The percent of households below 80 percent of median income is interpolated using decennial census tables which show the number of households in various income intervals. In the case of a joint application, each part of the zone must meet the 80 percent of median income criterion for its jurisdiction; or,

(4) *Population loss.* There must be at least a 20 percent population loss from 1970 to 1980. The 1970 population will be based on the smallest group of census areas for which data are available and which entirely contain the zone. The 1980 data will be based on the smallest group of census areas which entirely contain the 1970 areas.

(e) *Eligibility requirements for rural areas.* A nominated area that is a rural area as defined by these regulations must meet the requirements of paragraphs (a), (b) and (c) of this section and at least one of the criteria set forth in paragraph (d) of this section.

Subpart C—State and Local Government Actions

§ 596.200 Nominations by State and local governments.

A State and local government may nominate an area which is located wholly within the jurisdiction of the local government and which meets the nomination criteria set forth in paragraph (b) of this section for designation as an enterprise zone.

(a) *Nominations involving more than one unit of local government.* Two or more units of local government jointly may nominate, in conjunction with the State, areas that meet the nomination criteria set forth in paragraph (b) of this section for designation as an enterprise zone.

(b) *Nomination criteria.* A nomination must comply with each of the following requirements:

(1) The area must meet the eligibility requirements set forth in § 596.100(a).

(2) The State and local government, or governments in which the area is located must have the legal authority to nominate the area for zone designation and to carry out the course of action in accordance with § 596.202.

(3) All requirements of State and local law for the nomination must have been fulfilled.

(4) The State and local government or, in the case of joint nominations, each local government, must agree in writing to the specific provisions of the course of action to be carried out by each governmental entity, and must provide assurances that the commitments set forth in the course of action will be carried out during the period specified in the course of action.

§ 596.201 Nomination of Indian reservations.

(a) In the case of an Indian reservation, the governing body of the reservation may nominate areas located within the jurisdiction of the Indian reservation.

(b) The governing body of the reservation shall be deemed, for purposes of this part, to be both the State and local government for the reservation, and shall be responsible for meeting the requirements of § 596.200(b).

§ 596.202 Course of action.

The State and local government shall develop a course of action designed to reduce the various burdens borne by employers or employees in the nominated area and to promote community revitalization, as follows:

(a) *Implementation.* A course of action may be implemented by the local government or by the State nominating an area for designation (or both), and by nongovernmental entities. A course of action may be funded from the proceeds of any Federal assistance program as well as from State, local, or private resources.

(b) *Elements of course of action.* A course of action must include, but is not limited to, four of the following six elements:

(1) A reduction of tax rates, fees, or user charges applying within the enterprise zone;

(2) An increase in the level or efficiency of public services within the enterprise zone;

(3) Actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(4) Involvement of public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide to employers, employees and residents of the nominated area:

(i) Jobs and job training;

(ii) Technical assistance;

(iii) Financial assistance; and

(iv) Other assistance.

(5) The giving of special contract preference to businesses owned and operated by members of any minority; and

(6) The gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

(c) *Recognition of past efforts.* In evaluating courses of action agreed to by any State or local government, the Secretary will take into account the past efforts of a State or local government in reducing the various burdens borne by employees and employers in the area involved.

(d) *Prohibition of assistance for business relocations.* (1) The course of action may not include any action to assist:

(i) Any establishment relocating from one area to another area; or

(ii) Any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of a contract customarily performed by such other contractor or subcontractor.

(2) This limitation does not apply to the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary where:

(i) The establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operation; and

(ii) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other areas where the existing business entity conducts business operations.

Subpart D—Zone Designation Process

§ 596.300 Nomination for designation of an enterprise zone.

A separate Nomination for Designation of an Enterprise Zone must be submitted for each area for which enterprise zone designation is requested. The Nomination for Designation of an Enterprise Zone must be submitted in a form prescribed by HUD, and must consist of complete and accurate information. The Nomination for Designation of an Enterprise Zone shall contain:

(a) *Eligibility information.* Information necessary to determine whether the area meets the eligibility requirements of § 596.101(a);

(b) *State and local government certifications.* The nomination Certifications by the State and by each unit of local government in which the designated zone is located that:

(1) Each unit of local government meets each of the eligibility criteria set forth in § 596.101 (a) and (b);

(2) The area meets the population and boundary tests of § 596.101(a);

(3) The area is one of poverty, unemployment, and general distress and that the conditions are pervasive throughout the area as required by § 596.101(c);

(4) The area meets the tests of unemployment, poverty, low income or loss of population, set out in § 596.101(d); and

(5) The area contains no portion of an area that is either already designated as an enterprise zone under this part or is otherwise included in any other area nominated for designation as an enterprise zone under this part;

(6) Each governmental entity has the authority, with respect to the nominated area, to:

(i) Nominate the area for designation as an enterprise zone;

(ii) Make the State and local commitments required under § 596.200(b)(4); and

(iii) Provide assurances that these commitments will be fulfilled.

(7) The written agreement between the State and local government or governments required by § 596.200(b)(4) has been executed.

(c) *Maps and zone description.* Maps and a general description of the area shall accompany the nomination request.

§ 596.301 HUD action and review of nominations for zone designation.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of Nominations for Designation of an Enterprise Zone. The submission deadline and addresses for submission of nominations will be published by Notice in the **Federal Register.** The data and specific criteria which will be used to establish eligibility will also be identified in the Notice.

(b) *Acceptance for processing.* HUD will accept for processing those Nominations for Designation of an

Enterprise Zone which HUD determines have met the criteria required by this part. HUD will notify the State and local government or tribal governing body within 10 working days from receipt of the nomination whether or not the nomination has been accepted for processing. The criteria for acceptance for processing are as follows:

(1) The Nomination for Designation of an Enterprise Zone must be received by HUD on or before the close of business on the date established by Notice in the **Federal Register.**

(2) Each unit of local government must be determined by HUD to have met the requirements of § 596.101(b).

(3) The Nomination for Designation of an Enterprise Zone must be complete and contain a proposed course of action as required by § 596.202, and the certifications required by § 596.300 (b) and (c).

(c) *Evaluation of nominations.* Each nomination accepted for processing will be reviewed by HUD to determine that, in the judgment of the reviewing official, the problems to be addressed have been adequately assessed and the actions proposed in the course of action appear to address these problems.

(d) *Publication of designations.* Announcements of those zones receiving designation will be made by publication of a Notice in the **Federal Register.**

§ 596.302 Selection factors for designation of nominated zones.

Zone designation will be based solely on rank order of distress. Each area will be ranked within each of the criteria set forth in § 596.101(d) on the basis of the amount by which the area exceeds the criteria. For the poverty criterion the ranking will be based on the overall poverty rate for the smallest number of block groups, enumeration districts which contain the zone. The rank order will then be determined by the highest average ranking with respect to the four criteria. In any instance where the data are missing and the applicant can not establish that the area would pass the test a rank of zero would be used.

§ 596.303 Zone designation of rural areas.

For rural areas as defined in § 596.3, rank order of distress will be determined separately as set forth in § 596.101(e).

§ 596.304 Number of zones designated.

HUD may choose in advance to designate less than the maximum number of eligible zones in any one submission period. When HUD announces a submission period, HUD will announce the number of enterprise zones which will be designated as a result of that period. Qualified areas which are not selected in one submission period may reapply in a subsequent submission period.

Subpart E—Post Zone Designation

§ 596.400 Monitoring [Reserved].

§ 596.401 Revocation of enterprise zone designation.

The Secretary, after the consultations required by § 596.5 (b) or (c), as appropriate, may revoke the designation of an area as an enterprise zone if the Secretary finds that a local government or the State in which the zone is located is not complying substantially with the State and local commitments made in accordance with § 596.200(b)(4) or, (for an Indian reservation) the assurance required by § 596.201(b).

(a) *Warning letter.* Before revoking the designation of an area as an enterprise zone, the Secretary will issue a letter of warning to the nominating State and local governments:

(1) Advising that the Secretary has determined that one or more parties to the written agreement required by § 596.200(b)(4) or, (for an Indian reservation) the assurance required by § 596.201(b), are not complying substantially with the agreement or assurance; and

(2) Requesting a reply from all involved parties, within a specified period of time.

(b) *Issuance of a notice of revocation.* After providing a minimum of 90 days for parties to respond and upon a finding by the Secretary under this section, the Secretary may issue a final notice of revocation of the designation of the area as an enterprise zone.

§ 596.402 Evaluation and reporting.

For the zones designated in accordance with § 596.302, the Department will require periodic reports. These reports will identify the local and state actions which have been taken in accordance with the course of action and describe the economic and physical revitalizations which has occurred in the zone. The following types of data will be needed for evaluation of Enterprise Zone progress:

(a) *Base line data.* Base line data for the zone and the city as a whole to permit comparison of the city and zone before and after designation;

(b) *Job strategy.* A description of the strategy employed to create and maintain jobs in the zone;

(c) *Business data.* Collection of annual data on new firms created and terminated in the zone and for the city as a whole, the origin of firms moving into the zone (within or outside the SMSA), whether or not the firms are branches of existing firms, the number of firm expansions, jobs created, jobs retained for firms which provide solid evidence that they would have moved out of the zone in the absence of incentives, and a listing of benefits received by new and expanding firms.

Subpart F—Waiver or Modification of Rules

§ 596.500 Requests for waivers or modifications.

(a) *Parties to a request.* A Request for Waiver or Modification of a HUD rule shall be executed by the local government or Indian tribal government of the jurisdiction that nominated an area designated an enterprise zone under this part.

(b) *Submission requirements.* A Request for Waiver or Modification must be submitted in writing in a form prescribed by HUD. The Request shall contain:

(1) A citation of the specific rule or rules for which a waiver or modifications requested;

(2) A brief description of the change requested; and

(3) A brief description of why the change would promote the achievement of job creation, community development, or economic revitalization.

§ 596.501 Waiver or modification of HUD rules in enterprise zones.

(a) *Authority to grant waivers or modifications.* Upon the written request of the governments that nominated an area as enterprise zone under this part, the Secretary may waive or modify all or part of any rule which the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the designated enterprise zone, in order to further the objectives of the program.

(b) *Standards for consideration of requests for waivers and modifications.* In considering a request for a waiver or modification, the Secretary will:

(1) Determine that the waiver or modification furthers job creation, community development, or economic revitalization within the designated enterprise zone.

(2) Weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization against the effect the change is likely to have on the underlying purposes of applicable statutes and rules affected by the change.

(c) *Secretarial determination.* A request for a waiver or modification

may be approved whenever the Secretary finds that the public interest served by the modification would outweigh the public interest served by continuing the rule unchanged.

(d) *Waivers or modifications not authorized.* The Secretary will not approve any request to waive or modify any rule which:

(1) Was adopted to carry out a statute or Executive Order which prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap;

(2) Would directly violate a statutory requirement; or

(3) Would be likely to present a significant risk to the public health, including environmental health or safety.

(e) *View of interested parties.* To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties.

(f) *90 day review period for requests.* Not later than 90 days after receipt of a request under § 596.501, the Secretary will make a determination whether to grant a request for waiver or modification.

(g) *Notification.* Upon a determination by the Secretary to approve a waiver or modification, HUD shall inform the State and local governments requesting the waiver or modification.

(h) *Effect of subsequent amendments to rules waived or modified.* If, subsequent to the granting of a waiver or modification, HUD amends the rule for which the waiver or modification has been granted, the waiver or modification shall continue, in full force and effect unless the governments requesting the waiver or modification are consulted with respect to the effect of the amendment on the requested waiver or modification and the Secretary determines, that the justification for the waiver or modification is no longer valid.

Subpart G—Coordination of Housing and Urban Development Programs

§ 596.600 Coordination of HUD programs.

(a) To the maximum extent possible, the Secretary of HUD will provide special assistance to Enterprise Zones designated in accordance with § 596.302. This will include, but not be limited to:

(1) Expedited processing;

(2) Priority funding;

(3) Program setasides; and

(4) Provision of technical assistance in furtherance of the objectives of Title VII

(b) Although the designation of a Federal enterprise zone under this part does not in itself constitute a Federal action that would trigger application of Executive Orders 11625 and 12432 concerning minority business enterprise, the provision of funds federal funds to carry out elements of a course of action will require that the appropriate provisions of the program providing the funds regarding Executive Orders 11625 and 12432 be met.

Date: May 9, 1988.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 88-12435 Filed 6-2-88; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-878; FR-1913]

Delegation of Authority With Respect to Enterprise Zone Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes the Secretary to designate up to 100 Enterprise Zones. Within the designated zones, the Secretary may provide for waiver of HUD regulations, promote the coordination of HUD programs, and expedite the processing of applications for HUD assistance. This notice delegates to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, the Secretary's power and authority with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: This notice is effective on May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6588. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This notice states the scope of authority given to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development for Enterprise Zone development. All of the Secretary's authority with respect to this program is delegated, except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue or waive rules, regulations and guidelines under the program.

Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes the Secretary to designate up to 100 Enterprise Zones. Within the designated zones, the Secretary may provide for waiver of HUD regulations, promote the coordination of HUD programs, and expedite the processing of applications for HUD assistance. Proposed rules for the operation of the program are published elsewhere in today's issue of the **Federal Register.** Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated.

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to Enterprise Zone development as authorized in Title VII of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), except as indicated in Section B. below. This includes the authority to issue or waive rules, regulations or guidelines under the program.

Section B. Authority Excepted.

There is excepted from the authority delegated under Section A the power to sue and be sued.

Section C. Authority to Redelegate.

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations or guidelines under the Program.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: May 9, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-12436 Filed 6-2-88; 8:45 am]

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federal register

Friday
June 3, 1988

Part VI

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: On April 8, 1988, the President issued Executive Order No. 12635, declaring a national emergency with respect to Panama, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), ordering specified measures against Panama, and authorizing the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the Order. In implementation of that Order, the Treasury Department is issuing the Panamanian Transactions Regulations (the "Regulations"). The Regulations block all property and interests in property of the Government of Panama, its agencies, instrumentalities and controlled entities, including the Banco Nacional de Panama and the Caja de Ahorros, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of persons located within the United States. The Regulations also generally prohibit any payments or transfers of currency and other financial or investment assets to the Noriega/Solis regime from the United States, or by U.S. persons and subsidiaries located in Panama.

Certain payments or transfers are authorized by general license; these include: (1) Payments by individuals other than income tax payments; (2) travel-related payments by individuals or by U.S. firms in connection with the provision of travel services to individuals; (3) payments for postal and telecommunications services; (4) payments for utilities and similar municipal services; (5) payments of indirect taxes, including sales and excise taxes; (6) certain administrative fees paid in connection with basic business activity; and (7) payments related to publications.

Payments to the Noriega/Solis regime that are not authorized include: (1) Corporate and individual income taxes; (2) social security taxes (when paid by corporations or U.S. Government agencies, but not by individuals who ordinarily pay such taxes directly; (3) direct taxes and fees, including port fees, export fees, and import duties; (4) direct payments of excise taxes collected as agent for the Government of Panama; and (5) rental fees. Additionally, individuals may not make payments, directly or indirectly, for or on behalf of U.S. firms.

EFFECTIVE DATE: 4:00 p.m., Eastern Daylight Time, April 8, 1988, except § 565.205 which is effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Tel.: (202) 376–0408, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376–0236, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking opportunity for public participation, and delay in effective date, are inapplicable. Because no notice or proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations. The information collection requests contained in §§ 565.601 and 565.602 of this document are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the **Federal Register.**

List of Subjects in 31 CFR Part 565

Panama, Blocking of assets, Transfers of assets, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 565 is added to 31 CFR Chapter V to read as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

Subpart A—Relation of this Part to Other Laws and Regulations

Sec.

565.101 *Relation of This part to other laws and regulations.*

Subpart B—Prohibitions

565.201 *Prohibited transactions involving property in which the Government of Panama has an interest; transactions with respect to securities.*

565.202 *Prohibited payments or transfers from the United States to the Noriega/Solis regime.*

565.203 *Prohibited payments or transfers to the Noriega/Solis regime by U.S. persons located in Panama and by certain juridical entities.*

565.204 *Effect of transfers violating the provisions of this part.*

565.205 *Holding of certain types of blocked property in interest-bearing accounts.*

565.206 *Evasions.*

Subpart C—General Definitions

565.301 *Effective date.*

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565.307 *United States person.*

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565.312 *Interest.*

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565.403 *Termination and acquisition of an interest of the Government of Panama.*

565.404 *Payments to the Noriega/Solis regime prohibited; procedures for making payments to the Federal Reserve Bank of New York.*

565.405 *Blocking not applicable to U.S. persons outside the United States.*

565.406 *Indirect payments to the Noriega/Solis regime; payments in subsidiaries in third countries.*

565.407 *Clarification of interbank clearing payments.*

565.408 *Setoffs prohibited.*

565.409 *Payments in kind.*

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

565.501 *Effect of license or authorization.*

565.502 *Exclusion from licenses and authorizations.*

565.503 *Certain payments authorized.*

565.504 *Certain payments by individuals authorized.*

565.505 *Travel-related payments authorized.*

565.506 *Telecommunications and mail transactions authorized.*

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Subpart F—Reports

565.601 *Required records.*

565.602 *Reports to be furnished on demand.*

Subpart G—Penalties

565.701 *Penalties.*

565.702 *Prepenalty notice.*

565.703 *Presentation responding to prepenalty notice.*
565.704 *Penalty notice.*
565.705 *Referral to United States Department of Justice.*

Subpart H—Procedures

565.801 *Licensing.*
565.802 *Decisions.*
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Subpart I—Paperwork Reduction Act [Reserved]

Appendix A to Part 565—Panamanian Governmental Entities.

Authority: 50 U.S.C. 1701 *et seq.*, E.O. 12635, 53 FR 12134 (April 12, 1988).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 565.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulations authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 565.201 Prohibited transactions involving property in which the Government of Panama has an interest; transactions with respect to securities.

(a) Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Panama that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of persons located in the United States, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation or withdrawl of, or the endorsement or guaranty of signatures on, or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Panama is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to 4:00 p.m. E.D.T., April 8, 1988) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred, or otherwise disposed of any such security.

§ 565.202 Prohibited payments or transfers from the United States to the Noriega/Solis regime.

Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no direct or indirect payments or transfers may be made from the United States to the Noriega/Solis regime of funds, including currency, cash or coins of any nation, or other financial or investment assets or credits, except for interbank clearing payments. All transfers or payments to the Government of Panama shall be made into an account at the Federal Reserve Bank of New York, as provided in § 565.404.

§ 565.203 Prohibited payments or transfers to the Noriega/Solis regime by U.S. persons located in Panama and by certain juridical entities.

Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no direct or indirect payments or transfers may be made to the Noreiga/Solis regime of funds, including currency, cash or coins of any nation, or of other financial or investment assets or credits, by any United States person located in the territory of Panama, or by any person organized under the laws of Panama and owned or controlled by a United States person, except for interbank clearing payments. All transfers or payments to the Government of Panama by such persons shall be made into an account at the Federal Reserve Bank of New York, as provided in § 565.404.

§ 565.204 Effect of transfers violating the provisions of this part.

(a) Any transfer after 4:00 p.m. E.D.T., April 8, 1988, which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization hereunder and involves any property in which the Government of Panama has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before 4:00 p.m. E.D.T., April 8, 1988, shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which the Government of Panama has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such date.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act and this part, and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable, by virtue of the provisions of this section, shall not be deemed to be null and void or unenforceable pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satsifaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; the person with whom such

property was held or maintained must file with the Treasury Department, Washington, DC, a report setting forth in full the circumstances relating to such transfer.

The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance with paragraphs (d)(1) and (2) of this section.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment or other judicial process is null and void with respect to any property in which on or since 4:00 p.m. E.D.T., April 8, 1988, there existed an interest of the Government of Panama.

§ 565.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Any person currently holding property subject to § 565.201 which, as of the effective date of this section, June 3, 1988, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account in a domestic financial institution as of the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control. This requirement shall apply to currency, bank deposits and accounts, and any proceeds resulting from the sale of tangible property.

(b) For purposes of this section, the term "interest-bearing account" means a blocked account in a domestic financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. The funds may not be invested or held in instruments the maturity of which exceeds 30 days. The term "domestic financial institution" is defined in § 565.311.

(c) This section does not apply to blocked tangible, non-financial property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

§ 565.206 Evasions.

Any transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth in this subpart is hereby prohibited.

Subpart C—General Definitions

§ 565.301 Effective date.

The term "effective date" means 4:00 p.m., Eastern Daylight Time, April 8, 1988, except with respect to section 565.205, which is effective June 3, 1988.

§ 565.302 Panama.

The term "Panama" means Panama and all areas under the jurisdiction or authority thereof.

§ 565.303 Government of Panama.

The term "Government of Panama" includes the state and the Government of Panama, as well as any political subdivision, agency, or instrumentality thereof, including the Banco Nacional de Panama and the Caja de Ahorros. See Appendix A to this part for a list of additional Government of Panama entities.

§ 565.304 Noriega/Solis regime.

(a) The term "Noriega/Solis regime" includes:

(1) Manuel Antonio Noriega, Manuel Solis Palma, and any agencies, instrumentalities or entities purporting to act on behalf or under the asserted authority of either or both;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date acting or purporting to act directly or indirectly on behalf of any of the foregoing; or

(4) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within paragraph (a)(3) of this section. Such determinations shall be published from time to time in the **Federal Register**, but shall be binding prior to such publication upon any person receiving actual notice thereof.

(b) A partnership, association, corporation, or other organization shall not be deemed to fall within the definition of the "Noriega/Solis regime" solely by reason of being located in, organized under the laws of, or having its principal place of business in, Panama.

§ 565.305 Entity.

The term "entity" includes a corporation, partnership, association, or other organization.

§ 565.306 United States.

The term "United States" means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 565.307 United States person.

The term "United States person" means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States, excluding overseas branches except those operating in Panama; or any person in the United States.

§ 565.308 Transfer.

The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power.

§ 565.309 Property; property interests.

The term "property" and "property interest" or "property interests" shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, and other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, owners or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods or ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest

therein, leaseholds, ground rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 565.310 Credits.

The term "credits" means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit. The term "credits" includes, but is not limited to: Overdrafts; purchases of debt securities issued by the Government of Panama after April 8, 1988; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred to or extended to the Governor of Panama; and draw-downs on existing lines of credit.

§ 565.311 Domestic financial institution.

The term "domestic financial institution" means any of the following:

(a) An insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(b) An insured institution as defined in section 408(a) of the National Housing Act;

(c) An insured credit union as defined in section 101 of the Federal Credit Union Act; or

(d) Any other institution that is carrying on banking activities and that is chartered by a federal or state banking authority.

§ 565.312 Interest.

Except as otherwise provided in this part, the term "interest" when used with respect to property (*e.g.*, "an interest in property") shall mean an interest of any nature whatsoever, direct or indirect.

§ 565.313 Blocked account; blocked property.

The terms "blocked account" and "blocked property" shall mean any account or property in which the Government of Panama has an interest, with respect to which payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license authorizing such action.

§ 565.314 Interbank clearing payments.

The term "interbank clearing payments" means payments of funds by a bank to another bank, where such payments are effected by the bank or banks over a funds transfer system such as FedWire, CHIPS, SWIFT, or the like, or across an individual bank's books, where none of the banks involved has any actual knowledge that the original remitter of any funds to the Noriega/Solis regime is located in the United States and is other than a bank acting on its own behalf. See § 565.407 for further clarification.

§ 565.315 License.

Except as otherwise specified, the term "license" means any license or authorization contained in or issued pursuant to this part.

§ 565.316 General license.

The term "general license" means any license or authorization the terms of which are set forth in this part.

§ 565.317 Specific license.

The term "specific license" means any license or authorization not set forth in this part but issued pursuant to this part in response to a written application.

Subpart D—Interpretations

§ 565.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 565.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 565.403 Termination and acquisition of an interest of the Government of Panama.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of Panama, such property shall no longer be deemed to be property in which the Government of Panama has or has had an interest unless there exists in the property another such interest, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred to the Government of Panama, such property shall be deemed to be property in which there exists an interest of the Government of Panama.

§ 565.404 Payments to the Noriega/Solis Regime prohibited; procedures for making payments to the Federal Reserve Bank of New York.

The prohibitions on payments and transfers to the Noriega/Solis regime in §§ 565.202 and 565.203 apply to payments and transfers of any kind whatsoever, including payment of debt obligations, fees, taxes, and royalties owed to the Government of Panama, and also including payment or transfer of dividends, interest payments, and other periodic payments. Payments or transfers owed to the Government of Panama shall be made to "Government of Panama Account No. 2," established on the books of the Federal Reserve Bank of New York pursuant to §§ 565.202 and 565.203.

(a) Payments or transfers of funds into Government of Panama Account No. 2 over FedWire should be made using Typecode 15. The transfer instructions should name "Government of Panama Account No. 2" and refer to routing number 021001208.

(b) Payments or transfers of funds to Government of Panama Account No. 2 at the Federal Reserve Bank of New York other than by FedWire (*e.g.*, where FedWire is not available, as in Panama) shall be made payable to Government of Panama Account No. 2 and sent, along with all required or appropriate documents, to the following lockbox address: Republic of Panama, Box No. 0225, Washington, DC 20055.

§ 565.405 Blocking not applicable to U.S. persons outside the United States.

For purposes of the prohibitions set forth in § 565.201 of this part, the term "persons located in the United States" is intended to express a geographical limitation, and does not include U.S. persons located outside the United States, their branches located outside the United States, or juridical entities located outside the United States, even though owned or controlled by U.S. persons.

§ 565.406 Indirect payments to the Noriega/Solis regime; payments by subsidiaries in third countries.

The prohibitions in §§ 565.202 and 565.203 on payments or transfers to the Noriega/Solis regime apply to indirect payments (including reimbursement of a non-U.S. person for payment) made after 4:00 p.m. E.D.T., April 8, 1988. Unlicensed payments or transfers made to the Noriega/Solis regime from U.S. subsidiaries or branches in third countries shall, where such payments or transfers are normally made from the United States or Panama, be considered an evasion of the prohibitions set forth in §§ 565.202 and 565.203. Payments or transfers routinely made from these entities, however, are not prohibited.

§ 565.407 Clarification of interbank clearing payments.

(a) The authorization for interbank clearing payments contained in §§ 565.202 and 565.203 includes payments by one bank to another to settle on a net basis other payments transactions cleared by those banks, including check exchanges.

(b) Notwithstanding instructions received from their correspondents, banks located in the United States are not authorized to remit the proceeds of documentary collections or letters of credit to accounts maintained at Banco Nacional de Panama in Panama; such remittances are not included within the meaning of "interbank clearing payments." Banks located in the United States should seek alternate payment instructions from their correspondents.

§ 565.408 Setoffs prohibited.

(a) A setoff against a blocked account, whether by a bank or other U.S. person, is a prohibited transfer under §§ 565.202 and 565.203 if effected after 4:00 p.m., E.D.T., April 8, 1988.

(b) Except as licensed or otherwise authorized, a setoff as a method of settling payments to the Noriega/Solis regime, as by netting or cancelling a debt or other obligation, is prohibited

§ 565.409 Payments in kind.

Payments in kind made to the Noriega/Solis regime in lieu of a payment or transfer of funds, which term includes currency, cash or coins of any nation, as well as other financial or investment assets or credits, shall be considered an evasion of the prohibitions in subpart B.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 565.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or other authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in Subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 565.502 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice thereof.

§ 565.503 Certain payments authorized.

(a) All payments and transfers necessary to pay costs of utilities in Panama are authorized. Utilities shall include electricity, water, and similar municipal services such as trash collection and police and fire protection. The authorization set forth in this paragraph shall not be construed to extend to payments to the Noriega/Solis regime by the United States Government or any agency or instrumentality thereof, where such payments would be inconsistent with U.S. treaty obligations to Panama.

(b) All payments of indirect taxes (*i.e* those normally collected in the purchase of goods and services, such as sales and excise taxes) are authorized. This does not authorize the remittance of such payments, either directly or indirectly by U.S. persons or juridical entities owned or controlled by U.S. persons which collect such taxes for or on behalf of the Government of Panama.

(c) All payments of administrative fees and taxes paid in connection with basic business activity, including but not limited to: Commercial license fees, corporate registration fees and taxes, court pleading fees, creation of rights fees, copyright fees and taxes, custodial fees and services, document processing fees, fiscal stamps, health certificates, immigration fees, inspection services, international banking licenses, landing fees, legal fees, licensing fees, litigation costs, mineral extraction fees, municipal taxes, new product fees, notaries' fees, occupational risk insurance fees, parking meters, passport fees, patent fees and taxes, plant inspection fees, quarantine fees, radio and television registration fees, recordation fees, stamp taxes, towage fees, transportation tolls, trademark fees and taxes, vehicle registration fees, visa fees, warehouse storage fees, and work permits.

(d) This section does not authorize payment of income taxes; of social security taxes that are normally withheld for individuals and paid by other persons; of rental fees; or of direct taxes and fees (*e.g.*, port fees, export taxes and fees, or import duties and related expenses).

§ 565.504 Certain payments by individuals authorized.

All payments and transfers by individuals are authorized, except income taxes. This includes social security taxes that are paid by an individual directly to the Noriega/Solis regime, or by an individual on behalf of household employees. This paragraph does not authorize the payment of social security taxes paid by an individual which are normally paid by his or her employer, or of other payments by an individual made directly or indirectly on behalf of a juridical entity.

§ 565.505 Travel-related payments authorized.

All travel-related payments and transfers are authorized by individuals, including airport departure fees and taxes on tickets, and by United States persons, or by persons organized under the laws of Panama and owned or

controlled by a United States person, in connection with the provision of travel services to individuals (*e.g.*, landing fees and fuel). This section does not authorize the payment of income taxes or of social security taxes that are normally withheld for individuals and paid by other persons.

§ 565.506 Telecommunications and mail transactions authorized.

All payments and transfers for the purpose of securing postal or telecommunications services are authorized, including payments and transfers among common carriers for the purpose of securing such services, and payments and transfers for telephone, telex, telegraphic, satellite, and facsimile transmission services.

§ 565.507 Payments and transfers related to purchase and sale of publications authorized.

All payments and transfers related to the purchase in Panama or the purchase or sale of publications involving Panama and the United States are authorized. For purposes of this part, publications include books, newspapers, magazines, films, phonograph records, tape recordings, photographs, microfilm, microfiche, and posters, including items described in the following:

(a) 15 CFR 399.1, Control List, Group 5, CL No. 7599I: microfilm that reproduces the content of certain publications, and similar materials.

(b) 15 CFR 399.1, Control List, Group 9, CL No. 7999I: certain publications and related materials.

§ 565.508 Payment by the Noriega/Solis regime of obligations to persons within the United States.

(a) The transfer of funds by the Noriega/Solis regime after 4:00 p.m. E.D.T., April 8, 1988, by, through, or to any domestic financial institution or other person within the United States solely for payment of obligations to persons within the United States is authorized, provided that there is no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

(b) A person receiving payment under this section may distribute all or part of that payment to anyone, provided that any such payment to the Noriega/Solis regime must be in accordance with the provisions set forth in section 565.404.

Subpart F—Reports

§ 565.601 Required records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction in which he engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least two years after the date of such transaction.

§ 565.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 565.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, which provides in part:

> A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.
>
> Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

This section of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction of authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is directed to 18 U.S.C. 1001, which provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

§ 565.702 Prepenalty notice.

(a) *When required:* If the Director of the Office of Foreign Assets Control (hereinafter "Director) has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents.*

(1) Facts of violation.

The prepenalty notice shall:

(i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 565.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 565.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

§ 565.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within thirty days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 565.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses are set forth in Subpart E of this Part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisons of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instruction specified in those licenses.

(b) *Specific licenses.*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in Subpart B of this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this part may be filed in duplicate by letter or on an application form with the Office of Foreign Assets Control. Any person having an interest in a transaction in proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make the fullest disclosure of all parties in interest to the transaction so that a decision on the application may be made with the fullest knowledge of all relevant facts and so that the identity and location of the persons who know the most about the transactions may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed for an account other than that of the applicant, the agent, as applicant, must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The application or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

§ 565.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 565.803 Amendment, modification, or revocation.

The provisions of this part and any rulings; licenses, whether general or specific; authorizations; instructions; orders; or forms issued hereunder may be amended, modified, or revoked at any time.

§ 565.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comments, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 565.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order No. 12635 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 565.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the

definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations.

(b) Any form issued for use in connection with the Panamanian Transactions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

Subpart I—Paperwork Reduction Act [Reserved]

Appendix A to Part 565—Panamanian Governmental Entities

Abbattoir Nacional
Aeronautica Civil de Panama and/or Direccion General de Aeronautica Civil
Air Panama
Autoridad Portuaria Nacional (National Port Authority)
Banco de Desarrollo Agropecuario
Banco Hipotecario Nacional (National Mortgage Bank)
Banco Nacional de Panama (Panama National Bank)
Caja de Ahorros (Savings Bank)
Caja de Seguro Social (Social Security)
Citricos de Chiriqui (Chiriqui Citric Plant)
Colon Free Zone
Comite Nacional de Semillas (CANASEM)
Consejo Nacional del Banano
Consejo Nacional de Inversiones (CNI)
Consulado de Panama (Consulate of Panama) [1]
Consulado General de Panama (Consulate General of Panama) [1]
Consular y Naves and/or Direccion General Consular y Naves (SECNAVES)
Contadora Panama S.A.
Cooperativa Agroindustrial de Icacal (CAICA)
Corporacion Agropecuaria de Rio Hato (COAPRHA)
Corporacion Azucarera la Victoria (Sugar Mill)
Corporacion Bananera del Atlantico (COBANA)
Corporacion Bayano (Bayano Cement)
Corporacion Financiera Nacional
Corp. para el Desarrollo Integral del Bayano
Corp. para el Desarrollo Integral de Bocas del Toro
Direccion de Aeronautica Civil (Civil Aeronautics) (DAC)
Direccion de Patrimonio Historico (Historic Heritage)
Direccion General para el Desarrollo de la Comunidad (Community Development Admin.) (DIGEDECOM)
Direccion General de Aduanas (Customs Services)
Direccion Nacional de Acuicultura (DINAAC)
Direccion Nacional de Asuntos Administrativos
Direccion Nacional de Agroindustrias
Direccion Nacional de Asuntos Indigenas (DINAI)
Direccion Nacional de Desarrollo Social
Direccion Nacional de Informacion y Divulgacion
Direccion Nacional de Ingenieria
Direccion Nacional de Planificacion Sectorial
Direccion Nacional de Produccion Agricola
Direccion Nacional de Produccion Pecuaria
Direccion Nacional de Reforma Agraria
Direccion Metropolitana de Aseo
Directorio de Sanidad Vegetal
Electric Power Institute (IRHE)
Empresa Nacional de Maquinaria Agricola (ENDEMA)
Empresa Nacional de Semillas (ENASEM)
Explosivos Nacional, S.A. (Property of Panamanian Military Officers)
Floresta Panamena
Fomento Lechero
Fuerza Aerea Panamena (Panamanian Air Force)
Hipodromo Presidente Remon (Race Tracks)
Instituto para la Formacion y Aprovechamiento de Recursos Humanos (IFARHU)
Instituto de Acueductos y Alcantarillados Nacionales
Instituto de Investigacion Agropecuaria de Panama
Instituto de Mercadeo Agropecuario (IMA)
Instituto de Recursos Hidraulicos y Electrificacion
Instituto de Seguro Agropecuario (ISA)
Instituto Nacional de Agricultura, Divisa (INA)
Instituto Nacional de Cultura (Culture) (INAC)
Instituto Nacional de Deporte (Sports) (INDE)
Instituto Nacional de Formacion Professional (INAFORP)
Instituto Nacional de Recursos Naturales Renovables (INRENARE)
Instituto Panameno Autonomo Cooperativo (IPACOOP)
Instituto Panameno de Comercio Exterior (IPCE)
Instituto Panameno de Habilitacion Especial (IPHE)
Instituto Nacional de Telecommunicaciones (National Telecommunications Institute) (INTEL)
Instituto Panameno de Turismo (Tourism) (IPAT)
Laboratorio de Sanidad Animal
Marinexam, S.A.
Mision de Panama Ante las Naciones Unidas (Mission of Panama to the United Nations)
National Lottery
National Treasury of the Republic of Panama and/or Ministerio de Hacienda de la Republica de Panama
Organizacion Internacional Regional de Sanidad Agropecuaria (OIRSA)
Palma Africana
Segumar
Transit, S.A. (Property of Panamanian Military Officers)
Universidad de Panama (University of Panama)
Universidad Technologica
Water and Sewage Institute (IDAN)
Zona Libre de Colon.

[1] Different restrictions may apply to various consulates and consulates general. Questions should be directed to the Office of Foreign Assets Control.

Dated: May 10, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved:

Francis A. Keating, II,

Assistant Secretary (Enforcement).

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Friday
June 3, 1988

Part VII

Department of Defense

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Proposed Rules

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS DRG-Based Payment System and Fiscal Year 1989 Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS regulation, DoD 6010-8-R (32 CFR 199), pertaining to payment for inpatient hospital services. This proposed amendment changes the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. Some of these changes are necessary as a result of our experience with the system or to conform to a number of recent statutory changes affecting the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled. Other changes expand the scope of the DRG-based payment system.

DATES: Written public comments must be received on or before July 5, 1988.

ADDRESS: Send comments to the Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "Address" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

In 1983, Congress called on DoD to establish a new method to pay hospitals for inpatient care under CHAMPUS, to be modeled after the recently established prospective payment system for the Medicare program. Rather than just paying billed charges, the new method was to pay fixed rates for particular categories of medical care, grouped into diagnosis-related groups, or DRGs. This Congressional action was followed by a 1986 law giving CHAMPUS the practical ability to adopt a new payment method by linking hospital participation in Medicare with that in CHAMPUS.

Paying hospitals on the basis of prospectively determined amounts per discharge limits the financial liability of CHAMPUS, yet at the same time provides fair treatment and positive incentives for hospitals. Instead of paying hospitals whatever they charge for whatever services they provide, CHAMPUS now pays hospitals fixed rates in general regardless of how long the patient stays or how many procedures the hospital provides. By paying hospitals according to DRG, this system recognizes the different amount of resources required to care for patients with different diagnoses, demographic characteristics, and specific procedures performed. Hospitals may keep the difference between the amount paid for care and the amount it cost to provide the care. Thus, efficient hospitals have the opportunity to enhance their financial position.

On September 1, 1987, we published a final rule (52 FR 32992) to implement the CHAMPUS DRG-based payment system. On September 15, 1987, we published an amendment to the final rule (52 FR 34775) which contained the final adjusted standardized amounts. This was followed by a notice on March 1, 1988 (53 FR 6182) which implemented a new Grouper Program and the resultant revised weights and rates as well as certain provisions of the 1988 Department of Defense Appropriations Act which exempted certain services from the CHAMPUS DRG-based payment system. The regulations governing the CHAMPUS DRG-based payment system are located in 32 CFR Part 199.

This October, Medicare will be entering its sixth year under the DRG payment system and CHAMPUS will be entering its second. It has been found to be a fair, effective method for paying for quality hospital care.

B. Major Contents of This Proposed Rule

This proposed rule would be effective for the second year of operation of the CHAMPUS DRG-based payment system beginning on October 1, 1988. Following is a summary of the major changes that we are proposing to make to the system.

1. Exemption of Certain Pediatric Services from the CHAMPUS DRG-Based Payment System

We are now proposing that discharges involving pediatric bone marrow transplants, children determined to be HIV seropositive, and pediatric cystic fibrosis be exempt from the CHAMPUS DRG-based payment system.

2. Reclassification of Areas for the Adjusted Standardized Amounts

We are proposing to implement three adjusted standardized amounts—for large urban areas, other urban areas, and rural areas. These changes will conform to those implemented under the Medicare PPS and published on April 5, 1988 (53 FR 11134).

3. Redesignation of Certain Rural Areas as Urban Areas

We are proposing to adopt the changes made for the Medicare PPS under which certain rural areas, because of their proximity to urban areas, are redesignated as urban areas.

4. Medicare Cost-to-Charge Ratio

We are proposing to use a cost-to-charge ratio of .6368 as calculated by the Health Care Financing Administration (HCFA) and published in the May 1988 Medicare PPS proposed rule.

5. Alcohol/Drug Abuse Services

We are proposing to begin coverage initially deferred for alcohol/drug abuse services and include them under the CHAMPUS DRG-based payment system. Generally, payment for these services will be made using the DRGs in use under the Medicare PPS and using the weights and rates developed for the CHAMPUS final rule to be published on or about September 1, 1988. The one exception to the Medicare approach is that DRG 435, which represents the majority of CHAMPUS alcohol/drug abuse cases, will be split into two age groups.

6. Children's Hospitals

We are proposing to begin coverage initially deferred for these hospitals. Payment to these hospitals will be made under the CHAMPUS DRG-based payment system, but, in recognition of the higher costs of care in these hospitals, a "children's hospital differential" will be developed which will be used to increase each DRG-based payment to children's hospitals.

7. Neonate Services

We are proposing to begin coverage initially deferred for these services. When incorporated into the CHAMPUS

DRG-based payment system, payment for these services will take into consideration infants' birthweights as recommended in the Children's DRGs (CDRGs) developed by the National Association of Children's Hospitals and Related Institutions (NACHRI). We are currently developing the database necessary to calculate the relative weights for the CDRGs. We will also consider modifying the outlier policy for these services.

8. Outliers

We are proposing to revise our outlier procedures in accordance with most of the changes proposed for the Medicare PPS in the May 1988, proposed rule.

9. Burn Outliers

We are proposing to use the Medicare PPS burn outlier procedures published on April 5, 1988 (53 FR 11137).

10. Other Minor Changes and Clarifications to the Existing Procedures

There are a number of minor changes or clarifications to the provisions currently in the CHAMPUS regulation which we are proposing. These are:

—We are proposing to use the new Grouper Program used under the Medicare PPS beginning October 1, 1988.
—We are proposing to use the same update factors used by Medicare.
—We are proposing to use a revised formula for calculating the indirect medical education adjustment factor to reflect the revisions made in the Medicare formula.
—We are proposing that the per diem cost-sharing amount for beneficiaries other than dependents of active-duty members include an amount to recognize hospitals' costs for capital and direct medical education.
—We are proposing to eliminate the requirement that a hospital's request for payment of capital and direct medical education costs be submitted to the CHAMPUS contractor within three months of the end of the hospital's Medicare cost-reporting period.
—We are proposing clarifications to the definitions of "total inpatient days" and "total CHAMPUS inpatient days" which are required on hospitals' requests for capital and direct medical education payments.
—We are clarifying how the percentage reductions for capital payments which are required under the Medicare PPS will be applied under the CHAMPUS DRG-based payment system.
—We are proposing to use the wage index amounts published for the Medicare PPS in their proposed rule for FY 1989.
—We are clarifying a cross-reference regarding our intention that hospital-based professionals are to be reimbursed using the allowable charge methodology.

II. Exemption of Certain Pediatric Services from the CHAMPUS DRG-Based Payment System

Section 8064 of Pub. L. 100–202, the 1988 Department of Defense Appropriations Act, required certain pediatric services to be excluded from the CHAMPUS DRG-based payment system because of possible inadequacies in the DRG classification system for these conditions. CHAMPUS has not yet studied ways of improving the classification of these conditions. Therefore, we are proposing that the following services continue to be exempt from the CHAMPUS DRG-based payment system until appropriate classification changes can be made. The exemption applies whether the stated condition is the principal or a secondary diagnosis.

A. All services related to discharges involving pediatric (beneficiary less than 18 years old upon admission) bone marrow transplants. This will be ICD–9–CM diagnosis code V42.8 and ICD–9 procedure codes 41.0 and 41.91.

B. All services related to discharges involving children (beneficiary less than 18 years old upon admission) who have been determined to be HIV seropositive. This will be IDC–9–CM diagnosis codes 042 through 044 and 795.8.

C. All services related to discharges involving pediatric (beneficiary less than 18 years old upon admission) cystic fibrosis. This will be ICD–9–CM diagnosis code 277.

III. Reclassification of Areas for the Adjusted Standardized Amounts

Under the CHAMPUS DRG-based payment system, separate adjusted standardized amounts are calculated for urban and rural areas. In our original proposed rule which was published on June 3, 1987 (52 FR 20731), we proposed using a single national adjusted standardized amount. However, based on the comments we received and an analysis of CHAMPUS claims, we decided that the gap between urban and rural payments was sufficient to warrant an urban/rural differentiation in the payment system. We therefore adopted the same area differentiations used under the Medicare PPS.

Under section 4002(c)(1) of Pub. L. 100–203, the Medicare PPS is now required to compute three adjusted standardized amounts: one for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. A large urban area is defined as an urban area with a population of more than 1,000,000 or a New England County Metropolitan Area with a population of more than 970,000.

Just as for the previous distinction of urban and rural areas, we believe this further distinction of large urban areas and other urban areas is appropriate for CHAMPUS. We are, therefore, proposing to use the three adjusted standardized amounts in determining payment under the CHAMPUS DRG-based payment system. The large urban areas to be used are those used for the Medicare PPS as published by the HCFA in the **Federal Register** on April 5, 1988 (53 FR 11138).

IV. Redesignation of Certain Rural Areas as Urban Areas

Section 4005(a) of Pub. L. 100–203 requires the Medicare PPS to treat hospitals located in certain rural counties which are adjacent to one or more urban areas as being located in an urban area. Under the Medicare PPS this provision is effective for discharges occurring on or after October 1, 1988. Therefore, those areas affected will be identified by the HCFA as they implement this and other changes for FY 1989.

Since the impact on these areas under the CHAMPUS DRG-based payment system would be comparable to that under the Medicare PPS, we are proposing to use the same designations. Any county which is currently designated as a rural area but is redesignated as an urban area under the Medicare PPS shall also be considered to be an urban area for purposes of CHAMPUS.

Hospitals located in the specified rural areas will be paid at the higher urban adjusted standardized amount (ASA) and also will benefit from the predominantly higher metropolitan statistical area (MSA) wage indexes. This will better compensate these hospitals for the higher costs they experience as a result of their proximity to urban areas.

In adopting this provision, we are simply duplicating a change which will be made under the Medicare PPS on which the CHAMPUS DRG-based payment system is modeled. We believe it would be unreasonable to consider any other alternative.

Just as for the Medicare PPS, CHAMPUS implementation of this provision will ensure that it does not result in aggregate payments to either

urban or rural hospitals which are greater or less than would otherwise be made.

V. Medicare Cost-To-Charge Ratio

In calculating the adjusted standardized amounts (ASAs) used in the CHAMPUS DRG-based payment system, we have reduced the charges in the database to a cost basis by using the Medicare cost-to-charge ratio. This ratio was .66 as published in the Federal Register on September 3, 1986 (51 FR 31523) and was based on FY 1984 cost and charge data. However, HCFA has now updated this cost-to-charge ratio to .6368. Since the period for this updated ratio coincides more closely with the period we have used for the database in calculating the CHAMPUS ASAs (July 1, 1986, through June 30, 1987), we are proposing to use it.

We continue to believe that the Medicare cost-to-charge ratio is the best measure of the relation of hospital costs to charges that is currently available. Because hospital's posted charges to third-party payers are generally consistent, this ratio provides a reasonable estimate of CHAMPUS costs relative to charges. Moreover, it represents those costs which have been identified, through statute and regulation, as reimbursable under Medicare, the major government program. We also believe that since our beneficiaries are considerably younger and generally healthier on average, the resource consumption (and therefore, costs) for a CHAMPUS beneficiary would be less than for a Medicare beneficiary in the same DRG.

When we implemented the CHAMPUS DRG-based payment system last year, we used the most recently available Medicare cost-to-charge ratio of .66. This ratio was derived from FY 1984 data, but we used a database period of July 1, 1986, through June 30, 1987. Nevertheless, this was the only ratio available, and we were aware that the ratio had been steadily declining from year to year. The cost-to-charge ratio recently calculated by HCFA based on FY 1985 data is now .6368. Thus, the period for which it is calculated much more closely corresponds to our database period.

HCFA also has published the new cost-to-charge ratio on a state basis. The majority of CHAMPUS admissions are located in states with cost-to-charge ratios *below* the national average. For example, over 70 percent of CHAMPUS DRG admissions occur in states with urban cost-to-charge ratios below .62.

Use of the .6368 simply refines our base year calculation. We did consider rebasing in order to reflect in our payment rates the new shorter lengths-of-stay and other hospital efficiencies. Because CHAMPUS paid billed charges for so long, it is our assumption that our charges reflected an ingrained inefficient provision of care. Simply applying the Medicare cost-to-charge ratio to our charges most likely overstates appropriate costs. Nevertheless, we are proposing not to rebase at this time. We specifically invite comments on the issue of rebasing.

VI. Alcohol/Drug Abuse Services

When CHAMPUS implemented its DRG-based payment system on October 1, 1987, Medicare simultaneously extended its PPS to cover alcohol/drug abuse DRGs. Even so, we elected to defer coverage of alcohol/drug abuse DRGs, because we were not certain that the nature of alcohol/drug abuse treatment, and its classification, is comparable for both the CHAMPUS and Medicare beneficiary groups.

As proposed, since publication of our September 1, 1987, final rule, we have examined the impact of Medicare's alcohol/drug abuse procedures on CHAMPUS beneficiaries. This evaluation was performed through a contract with the RAND Corporation. This evaluation found that:

1. With one exception discussed below, the Medicare DRGs can be used to reimburse for CHAMPUS patients;
2. A large majority (more than two-thirds) of CHAMPUS discharges for alcohol/drug abuse treatment were from general acute-care hospitals;
3. On average, general hospitals are reimbursed slightly more than specialty hospitals;
4. Implementation of DRG-based reimbursement will result in no reduction in total payments for alcohol/drug abuse services.

As a result of the RAND study, we are proposing to end the exemption for alcohol/drug abuse services and reimburse them under the CHAMPUS DRG-based payment system. This will apply to all alcohol/drug abuse services regardless of whether they are provided in hospitals and hospital units subject to DRG-based reimbursement or in hospitals, such as psychiatric institutions, that are currently exempt from DRGs. Alcohol/drug hospitals and alcohol/drug units (in hopsitals otherwise subject to DRG-based payments) will no longer be exempt.

We will use the same DRGs as currently used in the Medicare PPS, with one exception. Our analysis has shown that a majority of CHAMPUS alcohol/drug abuse claims group into DRG 435 (alcohol/drug abuse or dependence, detoxification or other symptomatic treatment, without complications or comorbidity), and that for this DRG age appears to significantly influence resource use. We found that the average charges for patients under 21 years of age were approximately $1,900 higher than the average charges for patients over 21. Therefore, we will divide DRG 435 into two age-based DRGs (we will designate these as DRGs 900 and 901), which should improve the ability of the DRG classification system to reflect differences in resource use across patients. Since we will continue to use the Medicare Grouper, this split will be done by the CHAMPUS contractor (FI) after claims have been grouped.

This provision will enable CHAMPUS to incorporate a significant number of CHAMPUS admissions into our DRG-based payment system. This will provide us with the same benefits we achieved for other types of services—namely, a way to control our costs for these services and an incentive for hospitals to provide these services efficiently.

The operational impact of this provision on acute-care hospitals will be negligible, since Medicare implemented alcohol/drug abuse DRGs for these hospitals last year. Although a number of specialty hospitals have not previously been subject to DRG-based reimbursement, we believe there is no justification for continuing to differentiate them in the payment for these services.

The relative weights we use for these services will reflect the treatment patterns and resource use among CHAMPUS patients. It is for just this reason, that we have decided to split DRG 435 into two age-based DRGs.

We are aware that many of the specialty hospitals (alcohol/drug abuse, psychiatric, rehabilitation, and long-term) which treat CHAMPUS beneficiaries are not Medicare-participating providers. Since the participation linkage discussed in our September 1, 1987, final rule would not apply to those hospitals which are not Medicare-participating, they will be required to complete the Health Program Benefit Agreement contained in that final rule. By completing this agreement, hospitals agree to accept the CHAMPUS-determined allowable amount as payment in full for their services. The CHAMPUS-determined allowable amount will be based on the CHAMPUS DRG-based payment system for services subject to this system and on the hospital's billed charges (as described in the CHAMPUS regulation) for services exempt from the CHAMPUS

DRG-based payment system. Completed agreements are to be sent to the hospital's CHAMPUS FI, and a representative of the FI will sign and return a copy of the agreement. Just as for all other hospitals, any specialty hospital which is not Medicare-participating and which fails to complete the Health Program Benefit Agreement will no longer be an authorized CHAMPUS provider as of October 1, 1988. These agreements will be completed only upon request of the hospital to the CHAMPUS contractor.

We recognize that some hospitals which are not Medicare-participating hospitals may elect not to sign a participation agreement with CHAMPUS as a result of our implementation of the alcohol/drug abuse DRGs. In light of the relatively small number of hospitals which provide these services to more than a very few CHAMPUS beneficiaries, we expect the number of hospitals deciding not to sign agreements will be extremely small. Moreover, we believe that alternate sources of care will be available for beneficiaries in areas of any hospitals which choose not to sign a participation agreement. Should no alternative source be available in a 50-mile radius, we will consider an alcohol/drug abuse treatment hospital as if it were a sole community provider and exempt it from the DRG system.

Because of the number in which DRG-based payments are determined, it is impractical to place a limit on the number of covered days for a service subject to DRG-based reimbursement. Moreover, since implementation of DRG-based reimbursement for alcohol/drug abuse services provided by hospitals will eliminate length-of-stay as a determinant of payment, we are eliminating the current limits on individual stays for alcoholism. Currently, treatment of alcoholism is limited to seven days detoxification per stay and twenty-one days of rehabilitation. The lifetime limit for rehabilitation is unchanged, and the benefit period limitation is revised to one stay per benefit period, as opposed to twenty-one days per benefit period. We want to emphasize that these changes apply only to inpatient hospital services subject to the DRG-based payment system, and that we don't intend this to be a change to the benefit but rather a change to the procedures for applying the benefit.

In implementing these changes we are not making any distinction between alcohol abuse and drug abuse services. They are treated identically under the Medicare PPS, and we have found no justification in our studies to do any differently.

VII. Children's Hospitals

Last year we deferred coverage of children's hospitals by the CHAMPUS DRG-based payment system. We received a number of comments on our June 3, 1987, proposed rule which contended that the DRG classification system and the payment levels do not adequately distinguish the more complex and resource intensive children's conditions which are treated by children's hospitals. At the time, we examined CHAMPUS data relating to charges of children's hospitals and found some plausible support for this contention. Accordingly, we deferred coverage of children's hospitals, noting that we intended to review this area "so that children's hospitals can be incorporated into our DRG system in the future."

We have subsequently had several meetings with interested organizations including NACHRI, and, under a contract with the Department of Defense, the RAND Corporation has analyzed the implementation of DRG-based payments for children's hospitals. RAND's findings include:

—The proportion of day outliers in children's hospitals is not significantly different from that for pediatric services in other hospitals.
—Use of the CDRGs (exclusive of the neonate CDRGs) provides little improvement over the current DRGs as a predictor of resource use.
—Notwithstanding the above findings, the charges of children's hospitals are consistently higher than the charges for other hospitals for similar services.

In light of the above findings and our discussions with NACHRI, the difference in charges may be a result of two factors: (1) Children's hospitals, although they treat patients generally grouped into the same DRGs as other hospitals, may treat sicker patients on average, and (2) children's hospitals cannot shift some of their costs to less costly adult care as may occur in other hospitals.

We considered recognizing these higher costs by calculating a separate ASA for childrens' hospitals derived by applying the cost-to-charge ratio (currently .66) to the higher childrens' hospitals' charges. This method would recognize the possibility that childrens' hospitals treat sicker patients. It would not, however, recognize the possibility that general hospitals cross-subsidize pediatric care with adult patients while childrens' hospitals cannot. There is no empirical evidence to support or refute this premise. However, we are proposing, for now, to assume it is true for purposes of developing payment rates for childrens' hospitals. To assure full consideration, we invite comments on the possible alternative approach of applying the cost-to-charge ratio to a separately-calculated childrens' hospital ASA.

We are proposing that children's hospitals be subject to the CHAMPUS DRG-based payment system using the CHAMPUS DRGs, but in order to fully recognize their higher costs, we will develop a "children's hospital differential". The differential will be a predetermined amount which will be multiplied by the appropriate DRG relative weight and added to each DRG-based payment made to children's hospitals.

The differential will be equal to the difference between a specially calculated ASA for children's hospitals (using standard procedures but based on a database of only children's hospitals) and the ASA which would otherwise be applicable. It will be calculated so that it is "revenue neutral" for children's hospitals; that is, for the base year overall CHAMPUS payments to children's hospitals under the DRG-based payment system will be equal to those under the old payment system. To accomplish this we will calculate a separate ASA for childrens' hospitals using the same database as for other calculations (July 1, 1989, through June 30, 1987). Normally in calculating ASAs, we reduce the adjusted charges according to the Medicare cost-to-charge ratio (currently .66). However, in recognition of the higher costs of children's hospitals, we will not use this step in calculating the children's hospital differential. We will subtract the appropriate ASA from this children's hospital ASA, and this amount will be the children's hospital differential.

There will actually be two differentials used—one for children's hospitals in large urban areas and one for children's hospitals in other urban areas (there are no children's hospitals in rural areas). The differentials will not be subject to annual inflation updates. Of course, the normal ASAs will be updated annually according to the Medicare increase, so children's hospitals will benefit from these increases just as all other hospitals benefit from them.

NACHRI has also commented that each childrens' hospital is so unique that they require hospital-specific rates. Analysis of the variation among childrens' hospitals indicates that, in general, the variation is no greater for

childrens' hospitals than among large teaching hospitals. There is no justification for special treatment in this regard.

In addition, the vast majority of CHAMPUS claims from childrens' hospitals is concentrated in only a very few hospitals. Thus, the children's hospital differential will essentially be derived from charge data from those few hospitals which receive a significant amount of CHAMPUS reimbursement, and it will, in effect, be specific to them.

Just as for alcohol/drug abuse hospitals, we recognize that some children's hospitals may not be Medicare-participating providers. Those which are not must complete the Health Program Benefit Agreement in order to be authorized CHAMPUS providers If they do not, they will no longer be authorized CHAMPUS providers as of October 1, 1988.

VIII. Neonate Services

When the CHAMPUS DRG-based payment system was implemented on October 1, 1987, neonatal services were included in it. It was our position, based on an examination of CHAMPUS data, that the impact of DRGs on neonate services would occur primarily at children's hospitals which were exempt We found that the impact on other hospitals would be similar to the impact of other DRGs.

However Pub. L. 100-202, the 1988 Department of Defense Appropriations Act, required that discharges involving newborns and infants who are less than 29 days old upon admission (other than discharges classified to diagnosis related group 391) be exempt from our DRG-based payment system. This provision has been implemented and was included in a **Federal Register** notice published on March 1, 1988.

Based on our abbreviated experience with payment based on the existing neonate DRGs and on our discussions with NACHRI, we believe neonate services can be equitably included in the CHAMPUS DRG-based payment system. We are proposing that neonate services be reimbursed using the Pediatric Modified DRGs (PMDRG) that differentiate the DRG by birthweight. These PMDRGs were developed by NACHRI. A number of studies have shown that birthweight is a strong predictor of both hospital charges and length-of-stay. The PMDRGs, which are considerably more extensive than the current six neonate DRGs and include divisions based on birthweight, will much more accurately classify neonate admissions.

Because the CHAMPUS data do not now contain birthweight information, we will be using the relative weights for each birthweight category within a neonatal DRG from another large, comparable database. The overall weight for the neonatal DRGs will still be derived from CHAMPUS claims data.

We believe that this classification change, together with the new "childrens' hospital differential" and the increased payment for high-cost outliers proposed below, should substantially reduce or eliminate any adverse fiscal impacts on hospitals resulting from covering neonates in the DRG-based payment system. We invite comment on whether or not additional changes to the outlier policy specific to neonates, are appropriate to assure adequate payment

IX. Outliers

The CHAMPUS DRG-based payment system includes provisions for making outlier payments. That is, an adjustment is made to the DRG-based payment amount for those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified into the same DRG Such outlier payments are particularly important for CHAMPUS, since the number of CHAMPUS cases in many hospitals is relatively small, and there may not be an opportunity to "average out" DRG-based payments over a number of claims.

For the most part, our outlier policy follows the outlier procedures used in the Medicare PPS. In their proposed rule published in May 1988, HCFA proposes to change the procedures for reimbursing outliers, and CHAMPUS will make similar changes.

The Medicare analysis indicates that while our payment policy for outliers effectively reduces the risk faced by hospitals in treating cases that are outside the normal range of cases in terms of duration or costliness, additional compensation would be justified for the most expensive cases, particularly those long-stay cases with extremely high costs. On the other hand, some cases that currently qualify for additional payment as day outliers are not extraordinarily costly.

The Medicare research has shown that a higher marginal cost factor would result in more appropriate payments for the most expensive cases, by more effectively reducing the financial risk to hospitals that is associated with these cases. In particular, they note that the estimated loss per case is higher for cost outliers than for day outliers. When day outliers are separated into two categories—those exceeding the length-of-stay threshold but not the cost threshold, and those exceeding both thresholds—the estimated loss per case for the more expensive day outliers (those also exceeding the cost threshold) substantially exceeds that for the less expensive day outliers (those that do not exceed the cost threshold).

This finding that the financial risk associated with outlier cases varies substantially depending on whether the case is long stay only or the case also exceeds the cost threshold suggests that the marginal cost factor being used for the most expensive outliers (those that exceed the cost outlier threshold) is too low.

Accordingly, for discharges occurring on or after October 1, 1988, Medicare is proposing to set the marginal cost factor for the most expensive outlier cases (that is, all outlier cases exceeding the cost outlier threshold) at 80 percent of adjusted charges beyond the cost outlier threshold. Based on the Medicare research to date, they believe that this revised marginal cost factor would result in more accurate payment for the marginal cost of cost outliers and more adequate compensation to hospitals treating the most costly outlier cases.

In addition, we currently pay even the most expensive day outliers at a per diem amount that is based on the average payment for all discharges assigned to that DRG. For some of the cases that currently qualify as day outliers, the per diem rate paid does not adequately compensate the hospital for its marginal costs. This is especially true for day outlier cases with extremely high costs, for which the daily costs may vastly exceed the day outlier per diem and for which that daily difference is multiplied by a long length-of-stay.

We are proposing that the percentage payment for cost outliers be increased from 60 percent to 80 percent, and that cases which qualify as both a day outlier and a cost outlier will be paid at whichever outlier results in the greatest payment. Our methodology for calculating the long-stay and cost outlier cutoffs will continue to duplicate that used in the Medicare PPS.

We are not proposing to adopt the hospital-specific cost-to-charge ratio proposed by Medicare for purposes of computing cost outlier payments. Unlike Medicare, we believe use of a national cost-to-charge ratio is more appropriate for our beneficiaries. We have examined the state cost-to-charge ratios calculated by HCFA, and we find that for the states in which most of our beneficiaries are concentrated the national cost-to-charge ratio is consistently higher. Thus, on average, we believe use of anything

other than the national cost-to-charge ratio would actually reduce cost-outlier payments.

X. Burn Outliers

As a result of a statutory change (Section 4008(d)(1)(A) of Pub. L. 100–203), the outlier policy for those DRGs related to burn cases has been changed for Medicare. Therefore, we are proposing that for the DRGs relating to burn cases, the marginal cost factor for both long-stay and cost outlier be increased to 90 percent. There are six DRGs related to burn cases which are affected by this change. They are:

456—Burns, transferred to another acute care facility.
457—Extensive burn w/o O.R. procedure
458—Non-extensive burns with skin graft
459—Non-extensive burns with wound debridement or other O.R. procedure
460—Non-extensive burns w/o O.R. procedure
472—Extensive burns with O.R. procedure

XI. Other Minor Changes and Clarifications to the Existing Procedures

A. Grouper Program

The final rule which we published on September 1, 1987, requires that the CHAMPUS DRG-based payment system use the most recently available Grouper for the Medicare PPS. When our DRG-based payment system was developed and implemented, the FY 1987 Medicare Grouper was the only program available to use. When the HCFA introduced an updated Grouper—a FY 1988 version—we began to receive complaints, because our Grouper was different from Medicare's. As a result, we recalculated the weights and rates necessary for the FY 1988 Medicare Grouper, and we implemented it for discharges occurring on or after March 1, 1988. We are proposing to use the FY 1988 Medicare Grouper beginning October 1, 1988. Of course, this will depend upon its availability in time for use to complete the necessary calculations, such as the updated weights, the weights for alcohol/drug abuse DRGs, and the revised ASAs which recognize large urban areas.

Use of the updated Grouper will mean that we are also adopting the DRG reclassification changes which HCFA has proposed in their recently-published proposed rule. This includes the changes to the major diagnostic categories, the surgical heirarchies, the list of complications and comorbidities, and the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). We will also use the two new DRGs (476 and 477) proposed by HCFA. All of these changes are discussed in detail in HCFA's proposed rule.

B. ASA Update Factor

In order to update the ASAs for FY 1989, we are proposing to use the same factors used for the Medicare PPS. These factors are the market basket percentage increase minus 1.5 percent for hospitals located in rural areas, the market basket percentage increase minus 2.0 percent for hospitals located in large urban areas, and the market basket percentage increase minus 2.5 percent for hospitals located in other urban areas.

C. Indirect Medical Education Adjustment Factor

The CHAMPUS DRG-based payment system provides for an adjustment factor to be calculated for teaching hospitals in order to compensate them for indirect medical education costs. These hospital-specific factors are calculated in accordance with Medicare procedures, although the factors themselves are not the same as under Medicare, since we use different base data. Also, since CHAMPUS has no disproportionate share provision, we have calculated the adjustment factor using the formula for Medicare which is to be effective as of October 1, 1989. This formula results in a higher factor than would otherwise be calculated.

We intend to continue using the higher Medicare formula, but section 4003(a)(1) of Pub. L. 100–203 revised the formulas used under the Medicare PPS. As we stated in last year's final rule (52 FR 32999), CHAMPUS will revise its formula in accordance with any statutory change in the Medicare formula. Therefore, we are proposing to use the following formula for calculating the indirect medical education adjustment factor.

$$1.43 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}} \right)^{.5795} - 1.0 \right]$$

The new formula will be used beginning with all submissions of hospitals' requests for payment for capital and direct medical education costs received by CHAMPUS contractors after October 1, 1988.

D. Per Diem Cost-Sharing Amount for Beneficiaries Other than Dependents of Active-Duty Members

When we implemented the CHAMPUS DRG-based payment system we simultaneously modified the cost-sharing procedures for beneficiaries other than dependents of active-duty members. Prior to that time, these beneficiaries' cost-share was simply twenty-five percent of the CHAMPUS determined allowable amount, in accordance with the CHAMPUS statute. With implementation of the DRG-based payment system, we revised the procedures for calculating the cost-share to be the lesser of a per diem amount ($175) or twenty-five percent of the billed charge. The per diem amount was calculated so that total cost-sharing amounts for these beneficiaries would be equivalent to twenty-five percent of the DRG-based payments for hospital services. By doing this we not only complied with the statutory requirement that cost-shares be twenty-five percent, but, more importantly, we ensured that no beneficiary would be required to pay a cost-share under our DRG-based payment system that is greater than the cost-share which would have been required if the DRG-based payment system had not been implemented.

In calculating the cost-sharing per diem for FY 1989, we intend to follow the same procedures with one additional element. Our calculations last year did not include any consideration for the year-end payments for capital and direct medical education costs which CHAMPUS will pay. Since these costs previously would have been included in the hospitals' charges, beneficiary cost-shares would also have included a portion of them. Accordingly, to conform more closely to the requirements of the statute, we propose to include these costs in our calculation of the cost-sharing per diem for FY 1989.

E. Submission of Request for Payment for Capital and Direct Medical Education Costs

The CHAMPUS regulation currently requires that hospitals submit their request for payment of capital and direct medical education costs within three months of the end of the hospital's Medicare cost-reporting period. This requirement has often proven to be impossible for hospitals, because they are granted an extension to the cost-report filing deadline by HCFA. Since part of the data reported to CHAMPUS is derived directly from the Medicare cost-report, hospitals have been unable to meet CHAMPUS' deadline. We have recognized this problem and have not enforced the deadline.

We are proposing that this requirement be eliminated, because it serves no useful purpose for CHAMPUS. It is in the best interests of the hospital to submit the report at the earliest possible time, since no payment for capital and direct medical education costs can be made until the report is received by the CHAMPUS FI. Moreover, for teaching hospitals, the indirect medical education factor cannot be updated until the report is received. However, if the report is submitted late or even not at all, there is no adverse impact on CHAMPUS.

F. Clarification of Total Inpatient Days and CHAMPUS Inpatient Days

The CHAMPUS regulations requires that a hospital's request for payment of capital and direct medical education costs include "total impatient days provided" and "total CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS DRG-based payment system provided." Customarily, regulation requirements, which are often brief, are expanded and clarified in various manual instructions. Accordingly, these two items have been further defined in CHAMPUS manual instructions as "total inpatient days provided to all patients in units subject to DRG-based payment" and "total CHAMPUS inpatient days provided in units subject to DRG-based payment. (This is to be only days which were allowed for payment. Therefore, days which were paid entirely by other health insurance or which were determined to be not medically necessary are not to be included.)" This is to ensure that only days provided in units subject to DRG-based payment are reported.

These instructions, just as other manual instructions, have been disseminated to hospitals through the normal operations of our contractors. Nevertheless, we are proposing that, to ensure clarity of these requirements, the regulatory requirements be expanded to be more comparable to our existing manual instructions.

G. Percentage Reductions in Capital Payments

Under the CHAMPUS DRG-based payment system, CHAMPUS will make annual payments to hospitals to reimburse them for CHAMPUS' share of each hospital's capital costs. These payments are made only upon request and are based on data submitted in the hospital's Medicare cost-report. The final rule which implemented our DRG-based payment system stated that, "Reductions in payments for capital costs which are required under Medicare shall also be applied to payments for capital costs under CHAMPUS."

Section 4006(a) of Pub. L. 100–203 set forth percentage reductions to be made in capital payments under the Medicare PPS. In accordance with those reductions, the basic capital payments under the CHAMPUS DRG-based payment system shall be reduced by seven percent for any payments made for days between October 1 and December 31, 1987; by 12 percent for any payments made for days between January 1 and September 30, 1988; and by 15 percent for payments made for days during FY 1989. CHAMPUS capital payments will be prorated for the different percentage reductions based on the number of days in the reporting period which fall into each category.

Since last year's final rule provided for using these reductions, they have already been implemented for CHAMPUS. This information is provided only to clarify how we are applying the reductions.

H. Wage Index

The area wage indexes to be used for FY 1989 for the CHAMPUS DRG-based payment system are those used under the Medicare PPS as published in the **Federal Register** in May 1988.

I. Payment for Hospital-Based Professional and Nurse Anesthestist Services

The services of hospital-based professionals and nurse anesthetists are exempt from the CHAMPUS DRG-based payment system. As we stated in last year's proposed rule, they are to be reimbursed using the allowable charge methodology. Although we made the necessary changes to the regulation to implement this policy, we believe the cross-reference in § 199.14, paragraph (a)(1)(ii)(C) is misleading and we are correcting it.

XII. Mental Health Services

Under the CHAMPUS DRG-based payment system, we have exempted all services which would otherwise be paid under one of the psychiatric DRGs which are numbers 424–432. In addition, we have exempted psychiatric hospsitals and psychiatric units. With the exception of alcohol/drug abuse cases in them, these hospitals and units, as well as all mental health services will continue to be exempt from our DRG-based payment system. However, we have developed an alternative payment system for these services, and we are publishing a Notice of Proposed Rulemaking on it as well.

XIII. Other Required Information

A. Effective Date

The procedures contained in this proposed rule are to be applicable to all discharges occurring on or after October 1, 1988.

B. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

C. Coordination of Proposed Rule

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

XIV. Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of $100 million or more;

Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act (FRA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues

regulations which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include many nonproft and for-profit hospitals.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

We do not consider this proposed rule to be a major rule under Executive Order 12291. Moreover, this rule will not significantly affect a substantial number of small entities. The proposed changes set forth in this proposed rule, taken as a whole, would have a annual impact on the hospital industry of substantially less than $100 million. Additionally, the economic impact, which is solely a function of revised federal payments, on almost all individual hospitals is very little in view of the small percentage of hospital revenue provided by CHAMPUS and the small change in CHAMPUS payments represented by this proposed rule.

Therefore, no regulatory impact analysis is required. Nonetheless, throughout the preamble, we have provided information to permit a thorough assessment of all effects of the rule. We welcome comments and factual information that would facilitate additional analysis.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraphs (e)(4)(i) and (e)(4)(ii)(A) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(4) * * *

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of alcohol withdrawal (detoxification), for stabilization, and for treatment of medical complications of alcoholism. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. Stays provided for alcohol rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services also are subject to the provisions regarding the limit on inpatient mental health services.

(ii) * * *

(A) *Rehabilitative care.* Rehabilitative care in an authorized alcohol rehabilitation facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage during a single benefit period is limited to no more than one inpatient stay in hospitals subject to the CHAMPUS DRG-based payment system or 21 days in a DRG-exempt facility for rehabilitative care. If the patient is medically in need of alcohol detoxification, but does not require the personnel or facilities of a general hospital setting, detoxification services are covered in addition to the rehabilitative care, but in a DRG-exempt facility detoxification services are limited to 7 days. The medical necessity for the detoxification must be documented. Any detoxification services provided by the alcohol rehabilitation facility must be under general medical supervision.

* * * * *

3. Section 199.14 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i)(A), (a)(1)(i)(B)(*1*), and (a)(1)(ii)(C) introductory text; by removing paragraph (a)(1)(ii)(C)(*3*) and redesignating paragraphs (a)(1)(ii)(C) (*4*) through (*8*) as paragraphs (a)(1)(ii)(C) (*3*) through (*7*); by adding new paragraphs (a)(1)(ii)(C)(*8*), (a)(1)(ii)(C)(*9*) and (a)(1)(ii)(C)(*10*); by revising paragraphs (a)(1)(ii)(D), (a)(1)(iii) introductory text, (a)(1)(iii)(A)(*3*), (a)(1)(iii)(D)(*1*), (a)(1)(iii)(D)(*2*), (a)(1)(iii)(D)(*4*), (a)(1)(iii)(D)(*5*), (a)(1)(iii)(E)(*1*) introductory text, (a)(1)(iii)(E)(*1*)(*i*)(*bb*), and (a)(1)(iii)(E)(*1*)(*ii*); by adding a new paragraph (a)(1)(iii)(E)(*4*); and by revising paragraphs (a)(1)(iii)(G)(*3*) introductory text, (a)(1)(iii)(G)(*3*)(*vi*), and (a)(1)(iii)(G)(*3*)(*vii*) to read as follows:

§ 199.14 Basic program benefits.

* * * * *

(a) * * *

(1) *CHAMPUS DRG-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applied on a per discharge basis using Diagnosis Related Groups (DRGs). Payments under this system will include a differentiation for urban (using large urban and other urban areas) and rural hospitals and an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs, and outlier cases.

(i) * * *

(A) *DRGs used.* The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare Prospective Payment System, except as necessary to recognize distinct characteristics of CHAMPUS beneficiaries and as described in instructions issued by the Director, OCHAMPUS.

(B) * * *

(*1*) The classification of a particular discharge shall be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed, discharge status, and birthweight (for neonate admissions only).

* * * * *

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system. The services in paragraphs (a)(1)(ii)(C) (*1*) through (*5*) and (*8*) through (*10*) shall be reimbursed under the procedures in paragraph (a)(2) of this section, and the services in paragraphs (a)(1)(ii)(C) (*6*) and (*7*) shall be reimbursed under the procedures in paragraph (f) of this section.

* * * * *

(*8*) All services related to discharges involving pediatric bone marrow transplants (patient under 18 at admission).

(*9*) All services related to discharges involving children who have been determined to be HIV seropositive (patient under 18 at admission).

(*10*) All services related to discharges involving pediatric cystic fibrosis (patient under 18 at admission).

(D) *Hospitals subject to the CHAMPUS DRG-based payment system.* All hospitals within the fifty states, the District of Columbia, and Puerto Rico which are certified to provide services to CHAMPUS beneficiaries are subject to the DRG-

based payment system except for the following.

(*1*) The following hospitals are exempt for all services they provide.

(*i*) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt from the CHAMPUS DRG-based payment system. (See Subpart G of 42 CFR Part 412.)

(*ii*) *Christian Science sanitoriums.* All Christian Science sanitoriums (as defined in paragraph (b)(4)(vii) of § 199.6) are exempt from the CHAMPUS DRG-based payment system.

(*iii*) *Cancer hospitals.* Any hospital which qualifies as a cancer hospital under the Medicare standards and has elected to be exempt from the Medicare prospective payment system is exempt from the CHAMPUS DRG-based payment system. (See 42 CFR 412.94.)

(*iv*) *Hospitals outside the 50 states, the District of Columbia, and Puerto Rico.* A hospital is excluded from the CHAMPUS DRG-based payment system if it is not located in one of the fifty States, the District of Columbia, or Puerto Rico.

(*2*) The following hospitals or hospital units are subject to the DRG-based payment system for alcohol/drug abuse services which they provide. These hospitals and hospital units are exempt for all other services.

(*i*) *Psychiatric hospitals.* A psychiatric hospital which is exempt from the Medicare Prospective Payment System shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a psychiatric hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*ii*) *Rehabilitation hospitals.* A rehabilitation hospital which is exempt from the Medicare Prospective Payment System shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a rehabilitation hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*iii*) *Psychiatric and rehabilitation units (distinct parts).* A psychiatric or rehabilitation unit which is exempt from Medicare Prospective Payment System shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(*iv*) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system shall be subject to the CHAMPUS DRG-based payment system for alcohol/drug abuse services it provides and exempt for all other services. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system for services other than alcohol/drug abuse services, it must have an average length of inpatient stay greater than 25 days:

(*aa*) As computed by dividing the number of total inpatient days (less leave or pass days) by the total number of discharges for the hospital's most recent fiscal year; or

(*bb*) As computed by the same method for the immediately preceding six-month period, if a change in the hospital's average length of stay is indicated.

* * * * *

(*iii*) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the appropriate adjusted standardized amount (adjusted to account for area wage differences using the wage indexes used in the Medicare program) by a weighting factor specific to each DRG.

(A) * * *

(*3*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}} \right)^{.5795} - 1.0 \right]$$

* * * * *

(*1*) *Differentiate large urban, other urban, and rural charges.* All charges in the database shall be sorted into large urban, other urban, and rural groups (using the same groupings used in the Medicare program). The following procedures will be applied to each group.

(*2*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}} \right)^{.5795} - 1.0 \right]$$

* * * * *

(4) *Apply the cost to charge ratio.* Each charge is to be reduced to a representative cost by using the Medicare cost to charge ratio. This amount shall be increased by 1 percentage point in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

(5) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban, other urban, or rural group and dividing by the total number of discharges in the respective group.

* * * * *

(E) * * *

(1) *Outliers.* The DRG-based payment to a hospital shall be adjusted for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG. Cases which qualify as both a length-of-stay outlier and a cost outlier shall be paid at the rate which results in the greatest payment.

(*i*) * * *

(*bb*) *Long-stay outliers.* Any discharge which has a length-of-stay (LOS) exceeding the lesser of 3.00 standard deviations or 24 days from the DRG's geometric mean LOS shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus 60 percent (90 percent for DRGs related to burn cases) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean LOS for the DRG.

(*ii*) *Cost outliers.* Any discharge which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $27,000 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in paragraph (a)(1)(iii)(D)(4) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 80 percent (90 percent for DRGs related to burn cases) of all costs exceeding the threshold. Additional payment for cost outliers shall be made only upon request by the hospital.

* * * * *

(4) *Children's Hospital Differential.* The appropriate adjusted standardized amount for any hospital which qualifies as a children's hospital under the Medicare Prospective Payment System as contained in 42 CFR 412.23 shall be increased by a children's hospital differential. The differential shall recognize the higher costs experienced by children's hospitals and shall be equal to the difference between a specially calculated adjusted standardized amount for children's hospitals and the adjusted standardized amount which would otherwise be applicable during the base period.

* * * * *

(G) * * *

(3) *Information necessary for payment of capital and direct medical education costs.* Any hospital subject to the CHAMPUS DRG-based payment system which wishes to be reimbursed for allowed capital and direct medical education costs must submit a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

* * * * *

(*vi*) Total inpatient days provided to all patients in units subject to DRG-based payment.

(*vii*) Total allowed CHAMPUS inpatient days provided in units subject to DRG-based payment.

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1988.

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32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Per Diem Based Payment Method for Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule, if adopted, would revise the comprehensive CHAMPUS regulation, 32 CFR Part 199 [DoD 6010.8-R], to establish a new method of paying for mental health hospital care. Rather than continuing to pay billed charges, the new method would pay hospitals based on prospectively set fixed rates for each day of hospital services provided. These per diem rates would be calculated to be revenue neutral in the base period of calculation, with full adjustments for price inflation. The result will be nearly revenue neutral in fiscal year 1989 with respect to CHAMPUS payments for inpatient mental health services.

DATES: Written comments must be received not later than July 5, 1988. The Department expects to consider comments and proceed with issuance of a final rule by September 1, 1988, which would take effect with respect to hospital admissions that occur on or after October 1, 1988.

ADDRESS: Send comments to: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, Colorado 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

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FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Program Development, OCHAMPUS, telephone (303) 361-3572 and Stephen Knight, Office of Demonstrations and Special Projects, OCHAMPUS, telephone (202) 697-8975.

SUPPLEMENTARY INFORMATION:

I. Synopsis

This proposed rule proposes the establishment of a new method under CHAMPUS to pay for the hosptial portion of mental health care provided to CHAMPUS beneficiaries. This new method is to pay predetermined per-diem amounts for each day of hosptial care.

The proposal to establish a per-diem payment method is based on three primary principles. The first is that CHAMPUS can no longer afford to purchase services on the basis of reimbursing providers for whatever amount is billed. Rather, payment methods must be established that, while

assuring fair payments, also create incentives for efficiency. This principle gave rise to establishment last October of a diagnosis related group (DRG)-based payment method for most hospital care under CHAMPUS. It has further motivated another proposed CHAMPUS rule to expand the scope of the DRG payment regulation to certain categories of care initially exempt, most notably, children's hospital, neonatal, and substance abuse treatment services.

The need for an improved payment method for mental health services is no less acute in view of the striking recent increases in CHAMPUS costs for these services. For example, in the last fiscal year, CHAMPUS costs for mental health care increased 30% (to nearly $410 million), with more than four-fifths of the increase attributable to inpatient institutional costs. Thus, CHAMPUS needs to do something to establish a more reasonable payment method for hospital mental health services.

The second major premise underlying this proposed regulation is that a per-diem based payment method is both fair to providers and appropriate for creating reasonable incentives for efficiency. In this regard, it is noteworthy that a DRG-based system does not appear appropriate because hospital costs in connection with mental health care, unlike those for medical and surgical care, are not significantly associated with the diagnosis being treated. For this reason, DRG-based payment systems for mental health care are not generally used.

In contrast, per diem approaches have been widely used in government and the private sector as a means of paying for care prospectively. Like a DRG approach, a per diem method creates incentives for efficiency because if the provider can provide the services at a lower unit cost, profits increase. Conversely, inefficient providers do not get rewarded by having their full costs reimbursed; they must settle for the per diem amount.

DoD arranged for the RAND Corporation to perform a feasibility analysis of a per diem payment system for inpatient mental health care for the CHAMPUS population. RAND found that the main determining factor in charges for CHAMPUS mental health care is the patient's length of stay in the hospital, and that other factors, such as DRGs, are much less important. In fact, RAND found that if the proposed per diem system would have been used, few hospitals would have experienced substantial changes from the billed charges. Thus, RAND found that a system that holds constant the per day payments and responds to the length of stay performs well in minimizing the impact on individual hospitals.

To be more precise, as is detailed further below, the RAND analysis suggests that details of a per diem system be designed to reflect several significant variables, most notably higher charges in the first day of care and some differences in charges in psychiatric specialty hospitals versus general hospitals. Thus, this proposed rule takes into account such factors. Additionally, the proposed rule reflects area wage differences and both direct and indirect costs of medical education costs.

The third key thesis embodied in this proposed rule is that it is designed to be roughly revenue neutral for hospitals in fiscal year 1989. This reflects DoD's policy preference for establishing a fair payment structure that includes incentives for efficiency, rather than seeking more controversial and disruptive changes that could produce greater government savings. Thus, the per diem amounts that would be set under this rule are based on full average charges experienced in the base period, adjusted to take into account several special factors, and updated to fiscal year 1989 by the full value of expected increases in the prices they pay.

Therefore, in a nutshell, this proposed rule would establish a per diem based payment system for mental health care based on key principles that a system that rewards efficiency is needed to start to contain spiraling costs, that a per diem system is fair and reasonable, and that adopting a payment structure that will not substantially depart from revenue neutrality in its first year of operation is worthy of broad support.

II. Background

Last year, CHAMPUS implemented a prospective payment system that pays for most hospital care on a per discharge basis according to diagnosis-related groups (DRGs). This year, in a separate proposed rule, CHAMPUS is proposing to expand the system to cover children's hospitals, neonatal care, and alcohol and substance abuse cases. The remaining major type of hospital care not included in the DRG system is mental health care.

During the past two fiscal years approximately 20 percent of total CHAMPUS medical benefit expenditures has been for mental health related care. In FY 1987, the cost of mental health care rose an estimated 30 percent to reach $410.5 million. Most of this increase was for inpatient care. Costs per day alone rose 12 percent in this one year.

Clearly there has been a need to incorporate mental health care into a system that pays for care on a prospective basis so that hospitals begin to have incentives to provide care more efficiently. The CHAMPUS DRG regulation published last year indicated that DRGs do not appear to be an appropriate method of paying for mental health care. It stated that further study was needed to find an appropriate alternative prospective payment system. DoD contracted with the RAND Corporation to develop such an alternative. This notice presents the RAND findings and the DoD proposed approach to paying for inpatient mental health care on a prospective basis.

III. The Results of the Rand Corporation Analysis

The RAND analysis was based upon the CHAMPUS claims and provider files used to develop the overall DRG-based prospective payment system. The analytic claims file contained 17,945 mental health claims (excluding DRG 424), from 2395 providers, processed between January 1, 1986 and June 30, 1987.

In its analysis of CHAMPUS patterns of use and financing of inpatient hospital mental health care, RAND determined that a prospective payment system for CHAMPUS mental health hospital care is feasible. This section summarizes the significant findings of the RAND Corporation analysis.

A. DRGs Do Not Work for Mental Health Care

Based on a review of the studies on classification systems for mental health care, RAND reported that the unanimous verdict was that DRGs do not work for mental health services. DRGs do a poor job of classifying patients according to costs and systematic differences were found in the cost of treatment by different types of providers unaccounted for by the DRG system. RAND further stated that no other satisfactory classification method has been found.

The U.S. Department of Health and Human Services (HHS) reached a similar conclusion. In a Report to Congress, *Developing Perspective Payment System for Excluded Hospitals*, HHS stated that no matter what system is examined, neither DRGs nor variations thereof explain much of the currently-observed variation in length of stay and cost for mental health hospitalizations. The current mental health DRGs have been examined using data from many sources and generally account for less than 10 percent of the

variation currently observed in either length of stay or cost per admission. Efforts to improve the performance of mental health DRGs by using refined diagnostic categories have been disappointing.

B. CHAMPUS Workload is Highly Concentrated

RAND discovered some interesting facts about the nature of CHAMPUS mental health services. For example, RAND found that only 6 percent of the providers (151 hospitals) account for nearly half of the CHAMPUS mental health discharges. The degree of concentration is further reflected in the fact that only this many hospitals had more than 25 CHAMPUS admissions in the 18-month period. Conversely, more than 65 percent of hospitals had four or fewer CHAMPUS mental health discharges during the 18-month period. In addition, about two-thirds of the mental health discharges are concentrated in general hospitals. DoD anticipates that many of these general hospital discharges are likely to be in Medicare exempt specialty units, discussed below.

The distribution of discharges and providers by discharge volume follows:

DISTRIBUTION OF PROVIDERS AND DISCHARGES BY DISCHARGE VOLUME

Discharges per provider	Number of providers (%)	Number of discharges (%)
1	829 (35)	829 (5)
2 to 4	756 (32)	2,008 (11)
5 to 10	425 (18)	2,969 (17)
11 to 25	234 (10)	3,872 (22)
>25	151 (6)	8,267 (46)
Total	2,395 (100)	17,945 (100)

C. Average Charge Per Day Does Not Vary Much by DRG

The average charge per day is remarkably constant across DRGs, suggesting that the intensity of treatment does not depend significantly on specific diagnosis. As an example, the amount of resources typically used for the treatment of a diagnosis of depressive neuroses is not much different from the amount used for the treatment of some other diagnosis, such as personality disorders. RAND indicated that this suggests that observed differences in total charges are primarily due to differences in length of stay. With the exception of DRG 424 (operating procedures), the per diem charges before standardization range from $331 to $384 as shown below:

DRG	Average LOS (days)	Average per diem
425 Adjustment Reactions	8	$384
426 Depressive Neuroses	13	357
427 Other Depression	13	356
428 Personality Disorders	17	331
429 Organic Disturbances	14	348
430 Psychoses	15	353
431 Childhood Mental Disorders	22	334
432 Other Mental Disorders	20	354

D. Average Charges Are Higher for the First Day and Similar for all Subsequent Days

RAND found that one-day stays have the highest average charge. Data are not available to determine the actual charges associated with each day of care. To pursue possible difference in charges between the first few days of a stay and subsequent ones, RAND calculated the difference between the average charge per discharge for stays with consecutive lengths of stay. For example, RAND took the difference in average total charges between all two-days stays and one-days stays. The finding was that the daily charge did not vary substantially on the average after the first day. This suggests that only the first day is more costly.

RAND also found that when the higher first day charges are taken into account, the daily charge essentially does not vary by length of stay. As shown below, no matter how long the patient stays, once the first day payment is removed, the per diem amount is fairly constant for the reamining days.

AVERAGE CHARGE PER DAY AFTER FIRST DAY BY LENGTH OF STAY

Length of stay (days)	Charge per day after first day
2	$366
3	361
4	355
5	351
6	343
7	344
8	364
9	353
10	349
11	351
12	342
13	335
14	359
15	340
16	340
17	339
18	341
19	343
20	339
21	342
22	343
23	341
24	333
25	340

AVERAGE CHARGE PER DAY AFTER FIRST DAY BY LENGTH OF STAY—Continued

Length of stay (days)	Charge per day after first day
26	353
27	342
28	340
29	334
30 plus	301

E. A Two-Part Per Diem System Performs Very Well

RAND found that the CHAMPUS data suggest a per diem reimbursement system based on a higher payment for the first day and a lower one for subsequent days with a higher payment rate for psychiatric specialty hospitals. RAND found no significant difference in the per diem by age, by DRG, or by length of stay.

Use of a per diem system of payment is consistent with industry practice. In a report titled, *State Medicaid Inpatient Hospital Reimbursement, Summary of State Programs,* Abt Associates reported that nineteen State Medicaid programs pay for the acute portion of mental health care on a prospective per diem basis.

Similarly, the American Society of Internal Medicine reported that forty percent of PPOs use a per diem basis of payment for inpatient hospital care, usually using multiple rates by type of service, including mental health care.

IV. Summary of Proposed Rule

This section summarizes the major provisions of the proposed per diem based payment method for inpatient hospital mental health services.

A. Calculation of Per Diem Amounts

1. Revenue Neutral Impact

Per diem amounts are to be calculated from data from actual CHAMPUS claims during the base period of January 1986 through June 1987. The calculations are designed to produce results that would be revenue neutral with respect to total payouts for the mental health services covered. In other words, had this per diem payment method been in place in the base period, total payments to hospitals as a whole would have been the same.

2. Differential for Psychiatric Specialty Hospitals and Medicare Exempt Psychiatric Units of Other Hospitals

In analyzing CHAMPUS psychiatric claims, there appears to be a noteworthy difference in charges based

on the type of hospital involved. Psychiatric specialty hospitals tend to have higher charges than general hospitals. Thus, CHAMPUS data suggest, as have other studies, the appropriateness of different per diem amounts.

Additionally, a December 1985 study by the National Institute of Mental Health, *A Study of Patient Classifications Systems for Prospective Rate-Setting for Medicare Patients in General Hospital Psychiatric Units and Psychiatric Hospitals*, concluded that special psychiatric units in general hospitals resemble specialty psychiatric hospitals with respect to the severity of illnesses treated and other factors pertinent to costs. The main difference is between general hospitals without psychiatric units and all other classes of facilities. Research of this kind supports the current practice of Medicare in exempting from its DRG system specialty hospitals and speciality units of general hospitals. (Of course, in being exempt from the Medicare prospective payment system, these facilities are still subject to detailed cost reimbursement system restraints.)

Based on indications in the CHAMPUS data base, research findings in the literature and the Medicare policy, the proposed rule would produce two different per diem amounts: One for psychiatric specialty hospitals and Medicare-exempt psychiatric units of general hospitals; and the other for care in general hospitals exclusive of Medicare-exempt psychiatric units and all other hospitals. For purposes of simplified terminology, the former group will be referred to as specialty providers and the latter group as nonspecialty providers. Consistent with this split, the per diems are to be calculated to be revenue neutral with respect to each category, specialty providers and nonspecialty providers.

It should be noted in this regard that there may be psychiatric specialty units of general or other hospitals that have not been so designated for exemption from the Medicare prospective payment system because the hospital does not participate in Medicare or because the hospital has a more general prospective payment exemption. For these units, the proposed rule provides that they may obtain a psychiatric specialty unit designation for purposes of per diem payments upon demonstrating to CHAMPUS that they meet the same eligibility criteria as used by Medicare.

3. Different Per Diem For First Day Than For Remaining Days

Based on the RAND analysis described in the previous section, the proposed rule would differentiate between the first day of care and all other days. Costs for care in the first day are higher because of diagnostic work-ups and other factors. After the first day, the RAND analysis suggested there was remarkably little difference in charges among all subsequent days. Thus, the proposed rule would establish for both specialty providers and nonspecialty providers a first day per diem amount and a subsequent days per diem amount.

4 Standardize Charges

We standardize all charges for the hospital wage index and indirect medical education costs.

5. Per Diem Amounts For The First Day of Hospital Care

Applying the notions discussed above, the proposed rule lays out the steps involved in calculating the standard per diem amounts. To calculate the first day per diem amount, the first step is to subtract from the aggregate amount for all care covered by this proposed rule the amount estimated to be involved in the cost of direct medical education. Then for each category of provider, specialty and nonspecialty, the total amount involved in all one day stay discharges is divided by the number of such discharges, producing the average charge for all one day stay discharges. These will be the basic per diem amounts (one for specialty providers and one for nonspecialty providers) for the first day of care for all hospitalizations.

The exact amounts produced by this formula are not available at this moment. We estimate that the average charge in the base period ending in 1987 for the first day of care for all specialty providers (psychiatric specialty hospitals and Medicare-exempt psychiatric units of general hospitals) was in the general range of $575 and for nonspecialty psychiatric providers (all other providers, primarily general hospitals outside Medicare-exempt psychiatric units) was $525. As discussed below, the exact amounts will then be updated to levels appropriate for use in fiscal year 1989.

6. Per Diem Amounts For Subsequent Days of Care

As discussed in the previous section regarding RAND's analysis and findings, there was surprisingly little difference between the inferred per day charges among all days after the first day. Based on this finding, the proposed rule would calculate a single per diem amount (one each for specialty and nonspecialty providers) for all days of care after the first day.

Applying this approach, the proposed rule would take the aggregate amount for all covered care, subtract the pass-through amount (as was done to calculate the first day per diems) and further subtract the aggregate amount involved in all one-day stays for both specialty and nonspecialty providers. For each type of provider, the remainder is then divided by the total number of days of care after the first day. These will be the basic per diem amounts (one of specialty providers and one for nonspecialty providers) for all days after the first day of hospital care.

We estimate that in the base period the average charge for each day of care subsequent to the first day was in the general range of $350 for all specialty providers and $300 for nonspecialty providers. Again, the exact amounts, when finally calculated, will be updated to fiscal year 1989.

7. Update Factors

The discussion above describes the method of calculating the per diem derived from the CHAMPUS data base, which covered the period January 1, 1986 to June 30, 1987. In order to update the CHAMPUS data base to fiscal year 1989 levels, the appropriate Medicare hospital market basket factors will be used to move the charge levels forward to reflect estimated fiscal year 1989 levels. Future updates will be based on the annual update factor promulgated by Medicare for Prospective Payment System Exempt facilities. Psychiatric specialty hospitals and psychiatric specialty units of general hospitals are included in these PPS-exempt facilities. Congress has established the hospital market basket to be used as the update for PPS-exempt facilities for Fiscal Year 1989.

B. Adjustments to Per Diem Amounts

As with the CHAMPUS DRG regulation, this proposed rule provides for several adjustments to the per diem amounts to account for certain factors. These adjustments are discussed below.

1. Area Wage Adjustment

The applicable per diem amount will be adjusted by a wage index to recognize differences in prevailing wages in different areas of the country that have an impact on costs in hospitals. The wage index adjustment will be made in the same way it is for the CHAMPUS DRG based payment system.

2. Indirect Medical Education

An adjustment will also be made to the per diem amounts to reflect different costs involved in teaching hospitals. Like with the CHAMPUS DRG regulation, medical education costs will be recognized in two ways: with an indirect medical education adjustment and with a direct medical education pass-through. The indirect medical education adjustment will be applied to the applicable per diem in the same way as it is to the DRG standardized amount under the DRG-based payment system.

3. No Adjustment For Urban vs. Rural Hospitals

The proposed rule does not include an adjustment to pay different amounts to urban versus rural hospitals, as is done under the CHAMPUS DRG regulation. This was not included because CHAMPUS data reveal that there is no appreciable difference in the charges from hospitals based on whether they are in urban or rural areas. CHAMPUS had very few discharges from rural specialty psychiatric hospitals and the average per day charge difference for urban versus rural general hospitals was only about three dollars.

C. Pass Through Payments for Certain Costs

1. Direct Medical Education Costs

As with the CHAMPUS DRG regulation, this proposed rule would recognize special costs associated with graduate medical education in teaching hospitals. It is appropriate to recognize the medical education costs associated with care of CHAMPUS patients. This will be handled as a once per year special payment to teaching hospitals based on the method they now follow in connection with the DRG regulation.

2. No Pass-Through For Capital Costs

The CHAMPUS DRG regulation provides for an additional pass-through for capital costs. This is in recognition of the widely varied capital costs among hospitals. Only a hospital-specific approach to capital costs reasonably recognized those costs in the context of the DRG regulation. However, the RAND analysis indicated that the CHAMPUS claims data show that within specialty and nonspecialty provider groups there is not significant variation among hospitals' capital costs, they are relatively small with regard to mental health care, and that leaving capital costs in the base for calculating the per diems produces about the same result as establishing a pass-through, but avoids the administrative complexity and paperwork involved. Additionally, this method provides capital payments on a per claim basis rather than on an annual basis. On this basis, the proposed rule does not provide for special payments for capital costs. Rather, capital costs are recognized as part of the per diem amounts.

3. No Pass-Through or Add-on For Bad Debt

In developing the DRG regulation last year, we made special provision for bad debt by applying an across-the-board increase in the standardized amounts. We did this rather than follow the Medicare approach of making a pass-through payment because the substantial paperwork involved in a special CHAMPUS cost report appeared inappropriate. This proposed rule makes no special provision for bad debt. Rather, it is left to remain part of the base reflected in the general per diem amounts.

D. Covered Services

1. Most Inpatient Mental Health Services Covered

This proposed rule would cover hospital charges for most inpatient mental health services. Specifically, it covers services that fall within DRGs 425 through 432.

2. Operating Room Procedures Excluded

This proposed rule excludes DRG 424, operating room procedures with principal diagnosis of mental illness. Services related to this diagnosis-related group will continue to be reimbursed billed charges.

3. Alcohol and Drug Abuse Treatment Services Exempt

This proposed rule does not apply to services for drug and alcohol abuse treatment. These are services that fall within DRGs 433 through 437. DoD has elsewhere issued a Notice of Proposed Rulemaking proposing a DRG-based payment method for alcohol and drug abuse.

4. Other Providers

Individual health care professionals and other noninstitutional health care providers, are not covered by this proposed rule. Residential Treatment Centers are also not covered. Sole community hospitals, as designated by Medicare, are also exempt.

E. Beneficiary Cost Share Requirements

The proposed rule provides that beneficiary cost sharing requirements will be handled in a manner very much like they are under the DRG regulation. Under the proposed rule, the non-active duty beneficiary would be responsible for paying the lesser of a special beneficiary per diem amount or 25% of the hospital's allowable billed charges. The special beneficiary per diem amount will be based primarily on a calculation of 25% of the respective hospital payment per diem amounts (of which, as described above, there are four: Specialty provider first day, nonspecialty provider first day, specialty provider subsequent day, and nonspecialty provider subsequent day). In order to preserve the total 75–25% split required by law, this would be adjusted slightly to make up the difference for those cases in which the beneficiary cost share was less than 25% of the per diem amounts. As with the DRG cost share calculation method, this assures that beneficiaries will never be required to pay more under the new system than they would have been required to pay under the procedures now in place.

F. Additional Clarifications

1. No Special Treatment For Outliers

Because the proposed rule provides for a per diem based payment, patient length of stay, the major factor underlying hospital charges, is already the primary basis for determining the payment amount. Thus, unlike an admission-based payment method (such as the DRG regulation), for which there is a need for additional payments for cases which substantially depart from the average, there appears to be no such need under the proposed per diem based payment system for special treatment for outlier cases.

2. No Special Treatment For Transfer Patients

The DRG regulation makes special provisions for transferred patients. This proposed rule does not because it appears appropriate to pay both transferring and receiving hospitals on the basis of the normal operation of the per diem system. Although this will result in the government making two higher first day payments, that appears appropriate because it is assumed that both hospitals would perform diagnostic work-ups and the like.

3. Participating Provider Status Required

The proposed rule provides that hospital providers of services covered by this rule (like those covered by the DRG regulation) that do not participate in Medicare, must, if they wish to be CHAMPUS-authorized providers, agree to be participating providers under CHAMPUS. Participating providers accept CHAMPUS payment levels as payment in full. It should also be noted

that pursuant to section 1866(a)(1)(J) of the Social Security Act, 42 U.S.C. 1395cc(a)(1)(J), hospitals that participate in Medicare must also participate in CHAMPUS. It may also be noteworthy that under section 1079(j)(2)(A) of Title 10 of the United States Code, CHAMPUS generally pays hospitals "to the extent practicable" in accordance with the methods used for Medicare. Medicare pays for most hospital mental health care on a cost-reimbursement basis, which requires detailed annual Medicare cost reports. Because CHAMPUS has never used a cost-reimbursement methodology, this method would not be practicable for either hospitals or CHAMPUS.

G. Nonselected Options

For purposes of soliciting the most informed public comments possible, it may be noteworthy that DoD considered but did not adopt for purposes of this proposed rule several other possible features. Comments are invited on these possibilities, as they may be reconsidered in connection with development of the final rule.

1. Cost-to-charge Ratio

A major provision of the CHAMPUS DRG regulation was its use of the published Medicare cost-to-charge ratio for purposes of deriving from CHAMPUS charge-based data a cost-based data set from which the DRG rates and weights could be calculated. The cost-to-charge ratio adopted when the DRG regulation was promulgated was .66. (More recent data indicate that the cost-to-charge ratio more applicable in the DRG system base year was actually .6368.) In developing this proposed rule, we have decided not to apply a cost-to-charge ratio. We believe substantial arguments exist for applying such a ratio in order to, in a manner analogous to the DRG regulation, construct a data set more reflective of costs, rather than charges. On the other hand, some arguments could be advanced that in the case of most mental health services, even though Medicare now uses a cost-based payment method, the lack of a Medicare prospective payment precedent justifies higher CHAMPUS payments. For purposes of this proposed rule, we have resolved the matter in a way that seeks to avoid the controversy and disruption that would likely attend a proposal that included a cost-to-charge ratio similar to that adopted in the DRG regulation. We invite comments on this.

2. Reduced Payments For later Days of Care

We also considered establishing a third per diem level that would apply to later days of care. The reason for this would be to recognize that a per diem system, unlike a DRG per admission system, does nothing to reduce costs associated with unnecessary additional days of care up to the normally applicable 60-day limit. To address this apparent shortcoming, we considered having a lower per diem amount apply to later days of care, perhaps for those days that significantly exceed the average length of stay. Although we see some credible arguments for such an approach, we did not include it in the proposed rule.

3. Limited Update Factor

Rather than give the full value of the Medicare inpatient hospital market basket for purposes of updating the base year to fiscal year 1989, we consider using a more limited update factor. Especially in light of the nonuse of a cost-to-charge ratio in constructing the base period data set, it would appear defensible to start with some more vigorous restraint of the updates. Moreover, this approach would be consistent with Medicare's practice of applying a lower update factor to all facilities covered by prospective payment to reflect their opportunities for efficiencies and retention of profits. However, we decided to give the full benefit of the market basket to reinforce the policy direction of presenting a system that would not substantially deviate from revenue neutrality in its first year of operation. We invite comment on this point.

4. DRGs For General Hospitals.

Medicare exempts from its DRG system mental health cases in psychiatric hospitals and in psychiatric specialty units of general hospitals. It includes in its DRG system, mental health cases in general hospitals exclusive of specialty units. We considered including nonspecialty hospital cases in our DRG system as well. It is consistent with our general preference for mirroring the Medicare DRG system wherever possible.

Including nonspecialty mental health hospital cases in DRGs would probably not have a noticeable impact on hospitals since these patients are likely to be few in number. Further, these hospitals would only be under one CAMPUS prospective payment method instead of two. It would result, however, in paying for these cases on a basis more reflective of costs. Nevertheless, we have proposed to exclude all mental health cases from the DRG system. We invite comment on this.

V. Regulatory Procedures

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in annual effect on the national economy of $100 million or more or have other significant effects on segments or aspects of the economy. In addition, the Regulatory Flexibility Act (RFA) establishes certain requirements regarding regulations that would have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider small entities to include many nonprofit and for-profit hospitals.

This proposed rule is not a major rule under Executive Order 12291. Moreover, this rule will not significantly affect a substantial number of small entities. The proposed changes set forth in this proposed rule, taken as a whole, would have an annual impact on the hospital industry of substantially less than $100 million. Additionally, the economic impact, which is solely a function of revised federal payments, on hospitals is typically very little in view of the small percentage of hospital revenue provided by CHAMPUS and the small change in CHAMPUS payments represented by this proposed rule. The impact is especially slight because of the design feature of this proposed rule to not substantially depart from revenue neutrality in its initial year of operation.

Therefore, no regulatory impact analysis is required. Nonetheless, throughout the preamble, we have provided information to permit a thorough assessment of all effects of the rule. We welcome comments and factual information that would facilitate additional analysis.

B. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not mean to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

C. Coordination of Proposed Rule

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both

internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4(f)(3)(ii) is amended by redesignating paragraph (B) as paragraph (C), by adding a new paragraph (B), and by revising the redesignated paragraph (C), as follows:

§ 199.4 Basic Program Benefits.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) *Services subject to the CHAMPUS mental health per diem payment system.* The cost-share shall be the lesser of a fixed daily amount or 25 percent of the hospital's billed charges. A fixed daily amount shall be established to correspond to each of the four per diems calculated pursuant to § 199.14(a)(2)(i). These fixed daily amounts shall be 25 percent of the respective per diems, adjusted so that total beneficiary cost shares will equal 25 percent of total payments under the mental health per diem payment system. These fixed daily amounts shall be updated annually and published in the **Federal Register** along with the per diems published pursuant to § 199.14(a)(2)(i)(E).

(C) *Other services.* For services exempt from the CHAMPUS DRG-based payment system and the CHAMPUS mental health per diem payment system and services provided by institutions other than hospitals, the cost-share shall be 25% of the CHAMPUS-determined allowable charges.

* * * * *

3. Section 199.6(a)(8) is amended by revising the third sentence thereof to read as follows:

§ 199.6 Authorized providers.

(a) * * *

(8) *Participation provider* * * * Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in § 199.14(a)(1) or the CHAMPUS mental health per diem payment system in § 199.14(a)(2) must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. * * *

* * * * *

4. FR Doc. 87–19684, published in the **Federal Register** of September 1, 1987, is corrected on page 33012, column 2, in § 199.14 by correctly designating (a)(1)(iv)(D)(*3*) (*i*), (*ii*), and (*iii*) as (a)(2)(i), (ii) and (iii).

5. Section 199.14 is amended by redesignating paragraph (a)(2) as (a)(3), by adding a new paragraph (a)(2) and by revising the introductory text of newly redesignated paragraph (a)(3) as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(a) * * *

(2) *CHAMPUS mental health per diem payment system.* The CHAMPUS mental health per diem payment system shall be used to reimburse for inpatient mental health hospital care. Payment is made on the basis of prospectively determined rates and paid on a per diem basis. The system uses a series of per diems, which are designed to recognize differences in services provided in specialty hospitals and units, compared to general hospitals, and services provided in the first day of hospital care, compared with subsequent days. Payments under this system also include an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for direct medical education costs as an annual cost pass-through.

(i) *Calculation of per diem amounts.* The per diem amounts are calculated as set forth in this paragraph.

(A) *Revenue neutral impact.* The per diem amounts are calculated to produce the result of being revenue neutral in the base period of calculations to the class of hospitals affected.

(*1*) *Base period.* The base period used for the calculation of the per diems is the period of January 1, 1986 to June 30, 1987. The data compiled for the purpose of the calculations consist of all CHAMPUS hospital claims records for the services covered by the per diem system.

(*2*) *Standardize charges.* Prior to making the per diem calculations, the base period charges shall be standardized for indirect medical education costs and the hospital wage index.

(B) *Calculation of different per diems for specialty and nonspecialty providers.* Claims records in the base period will be separated into two groups, claims from specialty providers and claims from nonspecialty providers (as identified in paragraphs (a)(2)(i)(B)(*1*) and (*2*) of this section. From these groups will be calculated two respective per diems. These calculations will be designed to preserve revenue neutrality for each of these two classes of providers.

(*1*) *Specialty per diems.* Specialty per diems will be calculated from the claims records in the base period from all Medicare prospective payment system exempt psychiatric specialty hospitals and all Medicare prospective payment system exempt psychiatric specialty units of other hospitals. These providers will be paid on the basis of the specialty per diems. In addition, any hospital that has a psychiatric specialty unit that has not been so designated for exemption from the Medicare prospective payment system because the hospital does not participate in Medicare or because the hospital has a more general prospective payment system exemption may have its psychiatric specialty unit so designated for purposes of payment of the specialty per diems upon demonstrating that it meets the same criteria (as determined by the Director, OCHAMPUS) as required for the Medicare exemption.

(*2*) *Nonspecialty per diems.* Nonspecialty per diems will be calculated from the claims records in the base period from all other hospitals. These providers will be paid on the basis of the nonspecialty per diems.

(C) *Calculation of the first day per diems.* A first day specialty per diem and a first day nonspecialty per diem will be calculated from the standardized charges in the base period in each of the specialty and nonspecialty groups. For each of these groups, the first day per diem will be calculated by averaging charges for all one-day hospital stays during the base period, after having first subtracted total direct medical education costs.

(D) *Calculation of subsequent day per diems.* A subsequent day specialty per diem and a subsequent day nonspecialty per diem will be calculated from the standardized charges in the base period in each of the specialty and nonspecialty groups. For each of these groups, the calculation shall be made in accordance with the following steps:

(*1*) *Step 1: deduct direct medical education costs.* Total direct medical education costs are subtracted from total standardized charges.

(*2*) *Step 2: deduct first day charges.* The first day per diem amount shall be multiplied by the number of discharges and this product shall be subtracted from the amount from step 1.

(*3*) *Step 3: determine total subsequent days.* The total subsequent days shall be determined by subtracting the number of discharges from the total inpatient days.

(*4*) *Step 4: calculate subsequent day per diem.* The subsequent day per diem

shall equal the amount from step 2 divided by the total subsequent days.

(E) *Update factors.* Each of the four per diems established for the base period pursuant to paragraphs (a)(2)(i) (C) and (D) shall be updated to fiscal year 1989 on the basis of the Medicare inpatient hospital market basket rate. For subsequent fiscal years, each of these per diems shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system. The actual amount for each of the four per diems that will apply in any fiscal year shall be published in the **Federal Register** prior to the start of that fiscal year.

(ii) *Adjustments to per diems.* Payments made to hospitals under the mental health per diem payment system shall be based on the per diems established pursuant to paragraph (a)(2)(i) of this section, adjusted by the adjustments listed in this paragraph.

(A) *Wage index.* The same hospital wage indexes used for the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(2) of this section) shall be applied to the applicable per diem rate for each day of the admission.

(B) *Indirect medical education.* The indirect medical education adjustment factors shall be calculated for teaching hospitals in the same manner as is used in the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(2) of this section) and applied to the applicable per diem rate for each day of the admission.

(iii) *Annual cost pass-through for direct medical education.* In addition to claims payments with the per diem amounts calculated pursuant to paragraph (a)(2)(i) of this section, with adjustments pursuant to paragraph (a)(2)(ii) of this section, CHAMPUS shall annually reimburse hospitals for actual direct medical education costs associated with CHAMPUS beneficiaries. This reimbursement shall be done pursuant to the same procedures as are applicable to the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(G) of this section).

(iv) *Applicability of and exemptions from the CHAMPUS mental health per diem payment system.*

(A) *Services covered.* Unless specifically exempted, all hospital inpatient claims which group into a mental health DRG (DRG categories 425–432) shall be subject to the mental health per diem payment system.

(B) *Exempt providers and procedures.* The following providers and procedures are exempt from the CHAMPUS mental health per diem payment system.

(1) Professional Services. Professional services provided to hospital inpatients by individual professional providers not employed or contracted with the hospital are exempt from the per diem payment system. All mental health related services provided by hospital based professionals are included within the per diem payment system. Professional components of nonmental health services provided by hospital based professionals; for example, interpretation of radiology or pathology procedures, emergency room care and ambulance services, are payable separately under the allowable charge methodology when billed by the hospital.

(2) DRG 424. Admissions for operating room procedures involving a principal diagnosis of mental illness (services which group into DRG 424) are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of (a)(3) of this section.

(3) Sole community hospitals. Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt.

(4) Hospitals outside the U.S. A hospital is exempt if it is not located in one of the 50 states, the District of Columbia or Puerto Rico.

(3) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS DRG-based payment system or the CHAMPUS mental health per diem payment system shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1988.

[FR Doc. 88-12308 Filed 6-2-88; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 199

[DOD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Updating CHAMPUS Prevailing Charges

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS Regulation, DOD 6010.8-R (32 CFR Part 199), to allow the Secretary of Defense increased flexibility regarding the timing of updates to the prevailing charge levels which limit the amounts which are payable under CHAMPUS for professional services. This revision is in accordance with 55 U.S.C. 1079(h)(2), which permits the Secretary to adjust the base period for calculation of prevailing charges as frequently as he considers appropriate.

DATES: Written public comments must be received on or before July 5, 1988.

ADDRESS: Send comments to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

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FOR FURTHER INFORMATION CONTACT: Charles Gallegos, Chief, Office of Program Development, OCHAMPUS, telephone (303) 361-3005.

To obtain copies of this document, see the "Address" section above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

CHAMPUS reimburses professional services based on the allowable charge method, in which reimbursement is based on the lower of: (1) The billed charge for a service, or (2) the prevailing charge level that does not exceed the 80th percentile of billed charges for similar services in the same locality during a base period.

Section 1079(h)(2), Chapter 55, Title 10, United States Code, permits the Secretary to adjust the base period for calculation of prevailing charges "as frequently as he considers appropriate." The CHAMPUS Regulation currently is less permissive than the Statute, requiring that the base period shall be adjusted annually, which means that prevailing charges are updated on an annual basis.

The Congressional intent behind the current statutory provision is that DOD have the flexibility to determine how often to update the prevailing charge levels based on all relevant circumstances. The major relevant circumstances that should be taken into account relate to the need to, on the one hand, responsibly constrain program

cost growth, and on the other hand, maintain payment levels adequate to assure the availability of services to CHAMPUS beneficiaries.

Full consideration of both types of circumstances in determining the frequency of prevailing charge updates should take into account such factors as the rate of medical cost inflation. At times of high physician cost inflation, it is more important to have frequent updates so as to keep payment rates high enough to maintain very broad provider availability. At times of low physician cost inflation, however, frequent updates may have the effect of unnecessarily raising program costs by increasing payments even if not needed to maintain very widespread provider availability.

The current practice of automatic annual updates of the prevailing charge levels is not necessarily reflective of the most reasonable and appropriate balance between the two objectives of assuring broad provider availability and responsibly monitoring cost growth. Thus, it would appear reasonable and appropriate for DOD to have the flexibility to make the decision based on the actual circumstances presented.

None of this should be mistaken as hinting a weakened DOD commitment to assuring for CHAMPUS beneficiaries the availability of a very broad range of physicians and other providers who will be perfectly willing to accept CHAMPUS allowable payment rates and will not "balance bill" beneficiaries for any unallowed balances. CHAMPUS now has a remarkable record in this regard, achieving an extraordinarily high level of provider claims paid as billed. In fact, it is estimated that only about four percent of all dollars billed for professional services provided to CHAMPUS beneficiaries are subject to balance billing of beneficiaries. DOD intends to maintain an excellent record in this regard.

Thus, to summarize, the proposal to build into the regulation the same flexibility as Congress established in the statute is intended to permit consideration of all relevant factors before any changes are made to the prevailing charge levels.

The proposed amendment affects § 199.14(f)(1)(i)(B)(*2*) of the CHAMPUS regulation as it appears in the Code of Federal Regulations, Title 32. The corresponding citation in the DOD directives system is DOD 6010.8–R, Chapter 14, Section F.4(1)(b)*2*.

II. Other Required Information

A. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the executive authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

III. Regulatory Procedures

This proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

§ 199.14 [Amended]

2. Section 199.14(f)(1)(i)(B)(*2*) is revised to read as follows:

(*2*) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year, unless the Director, OCHAMPUS, determines that a different period for adjustment is appropriate and publishes a notice to that effect in the **Federal Register.**

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1988.

[FR Doc. 88–12309 Filed 6–2–88; 8:45 am]

BILLING CODE 3810-01-M

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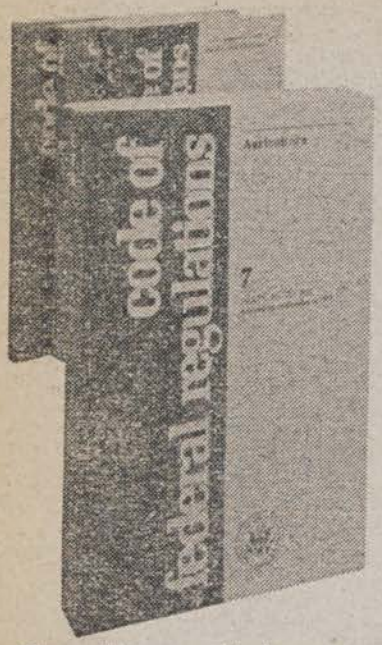
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