

6-9-88
Vol. 53 No. 111
Pages 21619-21730

Thursday
June 9, 1988

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Kansas
City, MO, and New York City and Sparkill, NY, see
announcement on the inside cover of this issue.

FEDERAL REGISTER



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for \$340.00 per year, or \$170.00 for 6 months in paper form, or \$188.00 per year, or \$94.00 for 6 months in microfiche form, payable in advance. The charge for individual copies is \$1.50 for each issue, or \$1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WASHINGTON, DC

WHEN: June 16; at 9:00 a.m.

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

RESERVATIONS: Maxine Hill, 202-523-5229

Contents

Federal Register

Vol. 53, No. 111

Thursday, June 9, 1988

Agricultural Marketing Service

RULES

Marketing orders; expenses and rates of assessment, 21624

Milk marketing orders:

Ohio Valley et al., 21626

PROPOSED RULES

Orange (navel and Valencia) grown in Arizona and

California, 21651

Peanuts, 21666

Agriculture Department

See also Agricultural Marketing Service; Commodity Credit Corporation; Forest Service

NOTICES

Agency information collection activities under OMB review, 21715

Antitrust Division

NOTICES

National cooperative research notifications:

Alfred University, 21742

Army Department

See Engineers Corps

Centers for Disease Control

NOTICES

Grants and cooperative agreements; availability, etc.:

Preventive health services; sexually transmitted diseases professional education program, 21726

Child Support Enforcement Office

RULES

State plan requirements:

Disregard of child support payments, 21642

Civil Rights Commission

NOTICES

Meetings; Sunshine Act, 21761

Commerce Department

See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

Commodity Credit Corporation

NOTICES

Meetings; Sunshine Act, 21761

Defense Department

See Engineers Corps; Navy Department

Education Department

NOTICES

Agency information collection activities under OMB review, 21723

Grants; availability, etc.:

Deaf-blind children and youth program; State and multi-State project applications, 21724

Employment and Training Administration

NOTICES

Job Training Partnership Act:

Lower living standard income level determination; correction, 21762

Energy Department

RULES

Acquisition regulations:

Management and operating contractors, 21646

Engineers Corps

NOTICES

Environmental statements; availability, etc.:

Ocean City, NJ, 21722

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States:

North Carolina, 21638

Hazardous waste:

Identification and listing:

Exclusions; withdrawal and policy determination, 21639

Toxic substances:

Polychlorinated biphenyls (PCBs) and chemical fate testing guidelines; incorporation by reference, 21641

PROPOSED RULES

Water pollution; effluent guidelines for point source categories:

Nonferrous metals forming and metal powders, 21774

NOTICES

Air quality; prevention of significant deterioration (PSD):

Permit determinations, etc.—

Region II, 21724

Meetings:

State-FIFRA Issues Research and Evaluation Group, 21725

Executive Office of the President

See Trade Representative, Office of United States

Export Administration Bureau

See also International Trade Administration

NOTICES

Export privileges, actions affecting:

Forson Elektronische Geraete GmbH, 21717

Family Support Administration

See Child Support Enforcement Office

Federal Aviation Administration

RULES

Airworthiness directives:

Beech, 21628

British Aerospace, 21630

PROPOSED RULES

Airworthiness directives:

Boeing, 21669

Federal Communications Commission**RULES**

Radio broadcasting:

FM table of allotments; revision

Correction, 21762

Radio stations; table of assignments:

Illinois, 21645

Iowa, 21646

Pennsylvania, 21645

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 21761

Federal Emergency Management Agency**PROPOSED RULES**

Flood elevation determinations:

Colorado et al., 21705

Federal Highway Administration**RULES**

Engineering and traffic operations:

Bridges; alternate designs, 21637

NOTICES

Environmental statements; availability, etc.:

New Hanover County, NC, 21757

Federal Maritime Commission**NOTICES**

Agreements filed, etc., 21725

Freight forwarder licenses:

Alomar Transport, Inc., et al.; correction, 21762

Pandair Freight, Inc., et al., 21725

Federal Reserve System**NOTICES***Applications, hearings, determinations, etc.:*

Eastern Iowa Bancshares, Ltd., et al., 21726

Food and Drug Administration**RULES**

Drug labeling:

Oral and rectal aspirin and aspirin-containing drug products (OTC); Reye syndrome warning labeling, 21633

Food for human consumption:

Glyceryl tristearate, 21631

NOTICES

Compliance policy guides availability; conditions under which homeopathic drugs may be marketed, 21728

Food additive petitions:

AKZO Chemie America, 21728

Ciba-Geigy Corp., 21728

Mitsui Petrochemical Industries, Ltd., 21728

Pfizer, Inc.; correction, 21729

Medical devices; premarket approval:

Sensor Model Kelvin 500 Pulse Generator, etc., 21729

Forest Service**NOTICES**

Environmental statements; availability, etc.:

Bridger-Teton National Forest, WY, 21715

Kootenai National Forest, MT, 21715

Southern region vegetation management program, 21717

Health and Human Services Department*See* Centers for Disease Control; Child Support Enforcement Office; Food and Drug Administration; Health Care Financing Administration; Human Development Services Office; Social Security Administration**Health Care Financing Administration****RULES**

Medicare and medicaid:

Reporting and recordkeeping requirements

Correction, 21762

PROPOSED RULES

Medicare:

Health maintenance organizations and competitive medical plans; coordinated open enrollment, 21696

NOTICES

Medicare:

Program issuances; quarterly listing, 21730

Human Development Services Office**NOTICES**

Grants; availability, etc.:

American Indian, Native Hawaiian, and Native American Pacific Islanders social and economic development projects, 21782

Interior Department*See* Land Management Bureau; Surface Mining Reclamation and Enforcement Office**Internal Revenue Service****PROPOSED RULES**

Income taxes:

Qualified scholarships; gross income exclusion, 21688

NOTICES

Meetings:

Art Advisory Panel, 21760

International Trade Administration*See also* Export Administration Bureau**NOTICES**

Meetings:

Caribbean Basin Business Promotion Council, 21720

Interstate Commerce Commission**NOTICES**

Railroad operation, acquisition, construction, etc.:

International Paper Co., 21740

Justice Department*See also* Antitrust Division; Juvenile Justice and Delinquency Prevention Office**PROPOSED RULES**

Formula grants:

De minimis exceptions to jail removal requirement, 21770

NOTICES

Pollution control; consent judgments:

Ambler Warehousing Corp. et al., 21741

Avco Corp., 21741

Eunice, LA, 21740

Washington Department of Transportation, 21741

Juvenile Justice and Delinquency Prevention Office**NOTICES**

Grants and cooperative agreements:

Juveniles in adult jails and lockups; removal, 21789

Labor Department

See Employment and Training Administration; Occupational Safety and Health Administration

Land Management Bureau**NOTICES****Meetings:**

Burns District Advisory Council, 21737
Prineville District Advisory Council, 21737

Mineral interest applications:

Nevada, 21737

Realty actions; sales, leases, etc.:

Alaska, 21738
Idaho; correction, 21738
Nevada, 21738

Survey plat filings:

Colorado, 21739

Withdrawal and reservation of lands:

New Mexico, 21739

National Highway Traffic Safety Administration**NOTICES**

Motor vehicle safety standards; compliance investigations, etc.:

Mercedes Benz Truck Co.; model L1317 trucks, 21757

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:

Gulf of Alaska groundfish, 21649

NOTICES**Meetings:**

Caribbean Fishery Management Council, 21721
Gulf of Mexico Fishery Management Council, 21721
Pacific Fishery Management Council, 21721
South Atlantic Fishery Management Council, 21721
Western Pacific Fishery Management Council, 21722

Permits:

Marine mammals, 21722

National Technical Information Service**NOTICES**

Patent license, exclusive:

Minco Products, Inc.
Correction, 21722

Navy Department**NOTICES****Meetings:**

Naval Research Advisory Committee, 21723

Nuclear Regulatory Commission**RULES**

Byproduct material; medical use:

Diagnostic misadministration report form, 21627

NOTICES

Environmental statements; availability, etc.:

Southern California Edison Co. et al., 21742
Washington Public Power Supply System, 21743
Yankee Atomic Electric Co. et al., 21743

Applications, hearings, determinations, etc.:

Commonwealth Edison Co., 21744
Northern States Power Co., 21747
Osage Wireline Service, 21747

Occupational Safety and Health Administration**PROPOSED RULES**

Safety and health standards:

Electrical safety-related work practices, 21694

Office of United States Trade Representative

See Trade Representative, Office of United States

Personnel Management Office**RULES**

Adverse actions:

Other than full-time career employment, 21619

Public Health Service

See Centers for Disease Control; Food and Drug Administration

Securities and Exchange Commission**PROPOSED RULES**

Investment companies and securities:

Fiscal year changes; issuer reporting and filing requirements, etc., 21670

NOTICES

Agency information collection activities under OMB review, 21751

Self-regulatory organizations; proposed rule changes:

Municipal Securities Rulemaking Board, 21751
Philadelphia Stock Exchange, Inc., 21753

Self-regulatory organizations; unlisted trading privileges:

Midwest Stock Exchange, 21752

Applications, hearings, determinations, etc.:

HT Insight Funds, Inc., 21753

Social Security Administration**PROPOSED RULES**

Social security benefits:

Benefits entitlement; reduction, 21687

Disability determinations; vocational factors consideration, 21685

State Department**NOTICES**

Grants; availability, etc.:

Discretionary grant programs; Soviet and Eastern European research and training, 21755

Surface Mining Reclamation and Enforcement Office**RULES**

Initial and permanent regulatory programs and coal mining and reclamation operations, bonding and insurance requirements:

Reinstatement of suspended rules; court order, 21764

Trade Representative, Office of United States**NOTICES**

Import quotas and exclusions, etc.:

India almonds case terminated, 21757

Transportation Department

See Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department

See also Internal Revenue Service

NOTICES

Organization, functions, and authority delegations:

Inspector General Office, 21758

Secretary (National Security) et al., 21760

Separate Parts In This Issue**Part II**

Department of the Interior, Office of Surface Mining
Reclamation and Enforcement, 21764

Part III

Department of Justice, 21770

Part IV

Environmental Protection Agency, 21774

Part V

Department of Health and Human Services, Office of
Human Development Services, 21782

Part VI

Department of Justice, Office of Juvenile Justice and
Delinquency Prevention, 21789

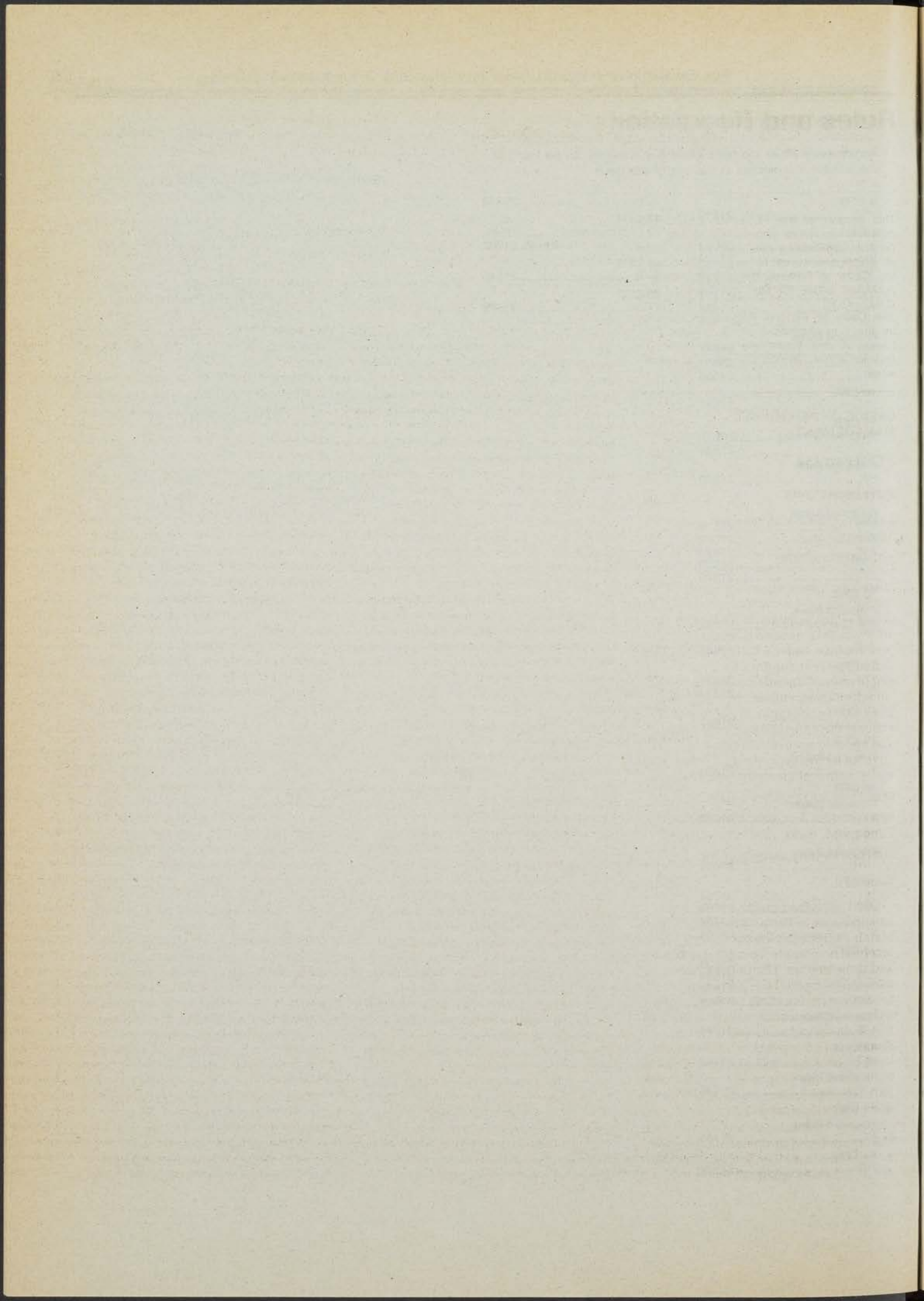
Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR	303.....21642
752.....21619	47 CFR
7 CFR	73 (4 documents).....21645,
911.....21624	21646, 21762
915.....21624	48 CFR
918.....21624	970.....21646
923.....21624	50 CFR
982.....21624	672.....21649
1033.....21626	
1046.....21626	
Proposed Rules:	
907.....21651	
908.....21651	
998.....21666	
10 CFR	
35.....21627	
14 CFR	
39 (2 documents).....21628,	
21630	
Proposed Rules:	
39.....21669	
17 CFR	
Proposed Rules:	
210.....21670	
240.....21670	
249.....21670	
270.....21670	
274.....21670	
20 CFR	
Proposed Rules:	
404 (2 documents).....21685,	
21687	
416.....21685	
21 CFR	
172.....21631	
201.....21633	
23 CFR	
650.....21637	
26 CFR	
Proposed Rules:	
1.....21688	
28 CFR	
Proposed Rules:	
31.....21770	
29 CFR	
Proposed Rules:	
1910.....21694	
30 CFR	
701.....21764	
800.....21764	
816.....21764	
817.....21764	
40 CFR	
52.....21638	
261.....21639	
761.....21641	
796.....21641	
Proposed Rules:	
471.....21774	
42 CFR	
400.....21762	
Proposed Rules:	
417.....21696	
44 CFR	
Proposed Rules:	
67.....21705	
45 CFR	
302.....21642	



Rules and Regulations

Federal Register

Vol. 53, No. 111

Thursday, June 9, 1988

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 752

Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These amendments to OPM's regulations revise current adverse action policy which appears to limit agencies' ability to take actions based on performance under 5 CFR Part 752. The define "current continuous employment," "similar positions," and "indefinite suspension" in regulation. They clarify the types of personnel actions, the categories of employees, and specific agencies covered by adverse action procedures. Finally, they make technical and clarifying changes.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Timothy M. Dirks, (202) 653-8551.

SUPPLEMENTARY INFORMATION:

General

OPM published proposed amendments to Parts 340 and 752 on March 27, 1987 (52 FR 9867), and received comments from 17 agencies and three unions. The bulk of the comments covered the proposed procedures in Part 340. Because of the nature of those comments, nearly all of which disagreed with the need for procedures of appeals, a decision has been made not to go forward with final issuance of the proposed regulations in Part 340 until further study of the issues and options has taken place.

Agency and union comments on Part 752 are itemized in the sections below, and decisions on the final regulations are noted and explained.

Part 752: Adverse Actions

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

Section 752.201 Coverage.

Comment: A union stated its belief that the definition of "current continuous employment" (which called for a period of employment "without a break of a workday") would mean that an employee who had completed a probationary period and who was then even 1 day in a nonpay status would not be covered by these procedures. The same commenter felt that the definition of "same or similar positions" would unduly deprive any competitive service employees of procedural protections if they had changed jobs to ones with different requirements. An agency recommended that OPM add the word "substantially" before the words "the same qualifications" in the definition of "same or similar positions." This would permit positions with minor differences in qualification requirements to be still considered similar positions for determining whether an employee had met the requirements for current continuous service.

Response: OPM realizes that the law providing coverage for employees in the competitive service is somewhat confusing and not self-explanatory. The confusion arises because there are employees in the competitive service who serve in two types of appointments. The majority serve under career, career-conditional, or certain other nontemporary appointments which require a probationary or trial period of service. Of this group, only those employees who have yet to complete the necessary probationary or trial period (required either because their current appointment is their first period of Government service, or because they have been appointed from a register to a different position) are excluded from Part 752 protections. Once they complete the current probationary period, they do not have to serve another probationary period, even after a break in Government service, unless they are again appointed from a register. (See 5 CFR Part 315.) The definitions of "current continuous employment" and "similar positions" do not apply to this group.

A much smaller group of competitive service employees serve in appointments (such as temporary

appointments pending establishment of a register (TAPER), *status quo*, or special tenure appointments) which require no probationary or trial period. It is this second group of employees to which our regulatory definitions are addressed. The law (5 U.S.C. 7501) intended to provide for coverage of this second group once the employees have completed one year of current continuous employment in the same or similar positions. It was not intended to require that all employees in the competitive service, including those who have completed the necessary probation or trial period, meet the one year of current continuous employment requirement.

To make it clearer what the law means, OPM is revising the statements of employees covered and employees excluded to show which groups are covered and which are not. OPM is also revising the definition of "current continuous employment" to show that continuous employment means employment without a break in Federal civilian service. Time in a leave or nonduty, nonpay status counts toward completion of the period of current continuous employment for adverse action purposes. In addition, OPM agrees with the commenters that the definition of "similar positions," a term introduced in statute in lieu of the pre-CSRA term "same line of work," may be too narrow, and is revising it to reflect that the duties and qualifications for the positions are close enough so that the incumbent could be readily interchanged between the two positions without undue interruption.

Section 752.203(d) Representation.

Comments: Three unions asked why OPM deleted the statement in the current regulation which states that employees covered by the terms of the negotiated agreement are governed by its terms and by 5 U.S.C. 7114(a)(5) for representation purposes. One of these commenters believed such a change would deny employees any right to representation. Another stated that this change strikes language favoring union representation of such employees.

Response: OPM continues to believe that the deleted language was misplaced in this section and could be read incorrectly to narrow representational rights for employees against whom a suspension of 14 days

or less is proposed. 5 U.S.C. 7114(a)(5) applies to representation during grievances and appeals. By its citation of this section, the current regulation could be read to mean that bargaining unit employees may only be represented by their union representatives after an adverse action is proposed. However, under 5 U.S.C. 7503(b)(3), all employees against whom such a suspension is proposed have the right to "an attorney or other representative" (which of course can include a union representative). Therefore, the employee may choose a representative of his or her choice in responding to an agency's proposal to suspend. Because 5 U.S.C. 7114(a)(5) does apply to representation of employees covered by a negotiated bargaining agreement for the purposes of challenging (i.e., grieving) an agency's action, OPM is deleting reference to 5 U.S.C. 7114(a)(5) in this section and adding to a new § 752.203(f) on grievance rights under this subpart.

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Pay, or Furlough for 30 Days or Less

Section 752.401(a) Adverse actions covered.

Comments: One union recommended that the regulation not be revised to reflect the decision of the U.S. Court of Appeals for the Federal Circuit in *Lovshin v. Department of the Navy*, 767 F.2d 834 (Fed. Cir. 1985), cert. denied, 106 S. Ct. 1623 (1986), that performance-based actions may be taken under the procedures of Chapter 75. The union stated that the case was untested and could be overturned. It also opined that allowing performance actions to be taken under Part 752 would violate the merit principle in 5 U.S.C. 2301(b)(6) requiring an opportunity to correct performance prior to removal.

Response: While the regulatory change does reflect *Lovshin*, it is also consistent with OPM's position that Part 752 is available for taking performance-based actions if the agency can meet the standard of "such cause as will promote the efficiency of the service" and can prove its case under the preponderance of the evidence standard required for actions taken under this part. This position is reflected in the final regulation which does not restrict or qualify an agency's authority to use Part 752 for taking performance-based adverse actions. Further, the *Lovshin* case has been tested as evidenced by the Supreme Court's refusal to overturn the lower court's earlier decision which was decided by a full panel of judges.

Section 752.401(b) Actions excluded.

Comments on paragraph (b)(7): A union commented that OPM should not say that the termination of a temporary or term promotion is not an adverse action, since OPM and MSPB had agreed that if a promotion were temporary the employee would be given Part 752 rights if the promotion lasted more than a specific period of time (two years). The union believes that the decision cited by OPM in its proposal—*Phipps v. Department of Health and Human Services*, 767 F.2d 895 (Fed. Cir. 1985)—is not well-established and should be very narrowly interpreted. An agency stated its belief that the intent of the *Phipps* decision went beyond temporary promotions in the competitive service and that unless OPM specifies that this section of the regulations applies also to excepted service employees, agencies with employees in the excepted service would be required to go through with needless rituals of adverse actions whenever a clearly temporary promotion extended beyond the times set in current Part 752. A second agency recommended that OPM make it clear that such a termination of a promotion would only be excluded if the employee was informed in advance of the temporariness of the promotion.

Response: With respect to the union's comments, OPM notes that the original appeal right was a creation of the Civil Service Commission and was not dictated nor reinforced by judicial decisions. OPM also notes that MSPB has affirmed and applied the *Phipps* decision in *Mosley v. Department of the Navy*, MSPB Dkt. No. PH07528510766 (1986). With respect to the comment that *Phipps* should be applied beyond temporary promotions in the competitive service and also cover all returns from clearly temporary promotions, OPM agrees that nothing in *Phipps* indicated that it was intended to cover only returns from temporary promotions in the competitive service. In OPM's current regulations on temporary promotions, in fact, the language covers all returns from temporary promotions. It is OPM's intent that the exclusion of the return from all promotions of a temporary nature cover both competitive and excepted service employees. Accordingly, this recommended change has been made.

With respect to informing the employee of the temporariness of a promotion before it takes place, OPM agrees that the employee should be on notice that the promotion is to be temporary, and has made the recommended change.

Recommendation of a new exclusion:

An agency has recommended that OPM add a specific exclusion of the reduction in grade of employees who are granted pay retention under 10 U.S.C. 1586. Employees of military departments who sign rotation agreements under this section of law have restoration rights to their former positions upon return from overseas assignments. If the agency cannot restore an employee to his or her former grade, it will assign the employee to a lower grade but with retained pay.

Comment: Currently, OPM's regulations only exclude actions which entitle employees to grade retention. OPM believes this very specific exclusion is better not expanded to cover situations when pay, but not grade retention is granted because each pay retention situation must be reviewed on its merits to determine if adverse action procedures are appropriate, i.e., because of a reduction in the rate of base pay previously paid to the employee. In addition, and as the agency pointed out, the MSPB ruled in *Fromer v. DOD*, 29 M.S.P.R. 481 (1985) that an employee who received the benefit of pay retention under 10 U.S.C. 1586 is not entitled to the procedural and appellate rights of 5 U.S.C. Chapter 75. Thus, the MSPB decision will be available to serve as precedent in future cases covered by 10 U.S.C. 1586.

Section 752.401(d) Employees excluded.

Comments: A union asked why OPM omitted Presidential appointees.

Response: Since the statute specifically excludes such employees from coverage of 5 U.S.C. Chapter 75, OPM considered that there was no necessity to exclude them by regulation. Nevertheless, because of the considerable complexity of coverage and exclusion, OPM has revised this subsection to clarify which employees the law excludes, including Presidential appointees. (OPM has also revised 5 CFR 752.401(c) to spell out which employees the law includes.)

Section 752.402 Definitions.

Comments on Subsection (b), Current continuous employment and (g), Same or similar positions: The comments on these definitions were the same as those on 5 CFR 752.201.

Response: See OPM's response to the above comments.

Comments on Subsection (e), Indefinite suspension: One union questioned OPM's authority to regulate indefinite suspensions.

Response: Indefinite suspensions, which have been in use for many years,

are provided for in FPM Chapter 752 and were covered in earlier FPM supplemental material. They have also been sanctioned by the courts (e.g., *Jankowitz v. United States*, 533 F.2d 538 (Ct.Cl. 1976), and *Wiemers v. Merit Systems Protection Board*, 792 F.2d 86 (Fed. Cir. 1985), (pending criminal proceedings); and *Thomas v. General Services Administration*, 756 F.2d 86 (Fed. Cir. 1985), pending inquiry)). As a form of suspension, they are within OPM's authority to regulate under 5 U.S.C. 7514. OPM's definition covers both indefinite suspensions during criminal proceedings and subsequent actions, with a shortened notice period under the "crime provision" in section 7513(b)(1), or during agency investigation or inquiry, with the usual 30-day notice required by that section.

Comments on Subsection (h).

Suspension: Several agencies also questioned the inclusion of enforced leave as a form of suspension, some because of the uncertain state of the case law and others because the inclusion of periods of annual and sick leave as suspensions seems to contradict the statute's definition of suspension as being in a *nonpay* status. (5 U.S.C. 7501(2).)

Response: MSPB and the U.S. Court of Appeals for the Federal Circuit indicated earlier the involuntary placement of an employee in a leave status for more than 14 days does in some instances constitute a constructive suspension and thus an appealable adverse action. OPM's proposed regulations reflected these holdings. More recently, the Federal Circuit expanded on the earlier case law and held that indefinite periods of enforced leave and periods of enforced leave of more than 14 days constitute appealable adverse actions. (*Pittman v. MSPB*, No. 87-3215 (Fed. Cir. Nov. 4, 1987).)

Although OPM agrees that including periods of paid leave in the definition of suspension would be inconsistent with the definition of suspension in 5 U.S.C. 7501(2) (and has not done so in the final regulations), agencies must be aware that if they choose to use indefinite periods of enforced leave or enforced leave of more than 14 days, they should follow Part 752 adverse action procedures to propose and effect the action, and give the employee appropriate notice of appeal rights, or face the possibility that a third party will reverse their action on the basis of harmful procedural error.

Section 752.404 Procedures.

Comments on Subsection 752.404(b).
Notice of proposed action: An agency recommended that OPM revise

paragraph (3) to allow agencies the discretion to choose among alternatives when they determine that an employee cannot be kept at the worksite during the notice period of an adverse action. One agency recommended that OPM not delete current subparagraph (3)(iii) in light of the MSPB's earlier decision in *Pittman*. Another agency suggested that OPM clarify proposed subparagraph (3)(iii) to distinguish it from current subparagraph (3)(ii) since both of these concern situations where the employee may be absent from the agency during the notice period. Finally, an agency recommended broadened language in subparagraph (3)(v) to allow agencies to place employees in paid, nonduty status before as well as during the advance notice period.

Response: OPM agrees that agencies should have the choice of alternatives in the unusual times when the employee cannot be allowed to stay at the worksite because his or her continued presence could pose a threat to the employee or others, result in lost or damaged Government property, or otherwise jeopardize legitimate Government interests. Thus, OPM has revised the subsection to allow agencies to select among the alternatives, rather than considering them in sequential order.

With respect to the current provision allowing the employee to be placed on enforced leave during the notice period when the agency has medical documentation demonstrating physical or mental incapacitation, OPM believes that the use of enforced leave during the notice period would be a constructive suspension under the Federal Circuit's decision in *Pittman* (see above) and has implemented the proposed deletion of this provision.

In regard to two paragraphs dealing with situations where the employee is absent from the agency (that is, when the employee has requested leave, or when he or she is absent for reasons not originating with the agency, such as incarceration), OPM has merged these two paragraphs to show that these are both situations where the employee's absence from the worksite can be charged to an appropriate leave category.

Finally, OPM has revised subparagraph (3)(v), using language parallel to that in the crime provision procedures (5 U.S.C. 752.404(d)(1)), to allow agencies more flexibility to place employees in a nonduty, paid status while initiating and effecting an action.

Comments of Paragraph 752.404(d)(1).
"Crime provision": An agency notes that 5 U.S.C. 7513(b) does not limit the

actions covered by it to removal or indefinite suspension.

Response: Though the statute does not limit the use of the crime provision to specific adverse actions, OPM notes that the whole purpose of the crime provision is to effect the action in a shortened period of time so that the employee can be removed quickly from the workplace. OPM does not believe that an agency could justify the need for such an abbreviation of procedures in the case of a reduction in grade or pay where the employee will remain at the workplace. OPM does agree, however, that time-specific suspensions, since they involve the temporary removal of the employee from the workplace and placement in a nonduty, nonpay status, may be used as appropriate with the crime provision. Accordingly, the final paragraph has been changed to cover removals and suspensions, including indefinite suspensions.

Comments of Subsection (e).

Representation: See comments on proposed 5 CFR 752.203(d).

Response: See OPM's response to comments on proposed 5 CFR 752.303(d).

E.O. 12291, Federal Regulation

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

Regulator Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 752

Administrative practice and procedure, Government employees.
U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending Part 752 of Title 5 of the Code of Federal Regulations as follows:

PART 752—ADVERSE ACTION

1. The authority citation for Part 752 is revised as set forth below; and all other authority citations throughout Part 752 are removed:

Authority: 5 U.S.C. 7504 and 7514; 5 U.S.C. 1302, Pub. L. 96-494; Section 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Section 752.405 also issued under 5 U.S.C. 1302 and 7513; Subpart F also issued under 5 U.S.C. 7543.

2. Paragraphs (b), (c), and (d) of § 752.201 are revised to read as follows:

§ 752.201 Coverage.

(b) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee with competitive status who occupies a position under Schedule B of Part 213 of this chapter;

(4) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;

(5) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3);

(6) An employee of the Government Printing Office; and

(7) An employee of the Administrative Office of the U.S. Courts.

(c) *Exclusions.* This subpart does not apply to a suspension for 14 days or less:

(1) Of an administrative law judge under 5 U.S.C. 7521;

(2) Taken for national security reasons under 5 U.S.C. 7531;

(3) Taken under a provision of statute, other than one codified in 5 U.S. Code, which excepts the action from Subchapter I, Chapter 75 of Title 5, U.S. Code;

(4) Of a reemployed annuitant; or

(5) Of a National Guard Technician.

(d) *Definitions.* In this subpart—

(1) "Day" means a calendar day.

(2) "Current continuous employment" means a period of employment immediately preceding a suspension action in the same or similar positions without a break in Federal civilian employment of a workday.

(3) "Similar positions" mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

(4) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

3. In § 752.203 paragraph (d) is revised, paragraph (f) is redesignated as

paragraph (g), and a new paragraph (f) is added to read as follows:

§ 752.203 Procedures.

(d) *Representation.* Section 7503(b)(3) of title 5 of the United States Code provides that an employee covered by this part whose suspension is proposed is entitled to be represented during the action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Grievances.* The employee may file a grievance through the agency administrative grievance system under Part 771 or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(3) of title 5 U.S.C., and the terms of any collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

4. The heading of Subpart D is revised to read as follows:

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

5. Section 752.401 is revised to read as follows:

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to the following actions:

- (1) Removals;
- (2) Suspensions for more than 14 days, including indefinite suspensions;
- (3) Reductions in grade;
- (4) Reductions in pay; and
- (5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to:

- (1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;
- (2) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;

(3) A reduction-in-force action under 5 U.S.C. 3502;

(4) A reduction in grade or removal under 5 U.S.C. 4303;

(5) An action against an administrative law judge under 5 U.S.C. 7521;

(6) A suspension or removal under 5 U.S.C. 7532;

(7) Actions taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(8) Action that entitles an employee to grade retention under Part 536 of this chapter, and an action to terminate this entitlement;

(9) A voluntary action by the employee;

(10) Action taken or directed by the Office of Personnel Management under Part 731 or Part 754 of this chapter;

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;

(13) Cancellation of a promotion to a position not classified prior to the promotion;

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment; or

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation.

(c) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at 5 U.S.C. 105, the U.S. Postal Service, or the Postal Rate Commission and who has completed 1 year of current continuous employment in the same or similar positions;

(4) A Postal Service employee covered by Pub. L. 100-90 who has completed one year of current continuous employment in the same or similar positions and who is either a supervisory or management employee or an employee engaged in in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee with competitive status who occupies a position in Schedule B of Part 213 of this chapter;

(6) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this chapter, provided that the employee has completed a trial period of 1 year after initial appointment in such position;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;

(8) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3);

(9) An employee of the Government Printing Office; and

(10) An employee of the Administrative Office of the United States Courts.

(d) *Employees excluded.* This subpart does not apply to:

(1) An individual appointed by the President;

(2) An employee in a Schedule C appointment;

(3) An employee in a statutorily excepted position that has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President or the head of an agency;

(4) A reemployed annuitant;

(5) A National Guard technician; or

(6) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, who is appointed under chapter 73 of title 38, United States Code.

6. Section 752.402 is revised to read as follows:

§ 752.402 Definitions.

(a) "Day" means a calendar day.

(b) "Current continuous employment" means a period of employment or service immediately preceding an adverse action in the same or similar positions without a break in Federal civilian employment of a workday.

(c) "Furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(d) "Grade" means a level of classification under a position classification system.

(e) "Indefinite suspension" means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

(f) "Pay" means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

(g) "Similar positions" mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

(h) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days.

7. In § 752.403, paragraph (a) is revised to read as follows:

§ 752.403 Standard for action.

(a) An agency may take an adverse action, including a performance-based adverse action, under this subpart only such cause as will promote the efficiency of the service.

(8) In § 752.404, the second sentence of paragraph (b)(1), the introductory text to paragraph (b)(3), and paragraph (b)(3) (ii) through (iv) are revised; paragraph (b)(3)(v) is removed; the fourth sentence of paragraph (c)(3), and paragraphs (d)(1) and (e) are revised to read as follows:

§ 752.404 Procedures.

(b) *Notice of proposed action.* (1) * * * The agency may not use material that cannot be disclosed to the employee of his or her representative or designated physician under § 297.204(c) of this chapter to support the reasons in the notice.

(3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's

continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of § 752.404(d)(1) of this part, the "crime provision." This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

(c) * * *

(3) * * * If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning disability retirement. * * *

(d) *Exceptions.* (1) Section 7513(b) of title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension (including indefinite suspension). The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days. When the circumstances require that the employee be kept away from the worksite, the agency may place him or her in a nonduty status with pay for such time as is necessary to effect the action.

(e) *Representation.* Section 7513(b)(3) of title 5 of the United States Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release

from his or official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

9. In § 752.405, paragraph (b) is revised to read as set forth below.

§ 752.405 Appeal and grievance rights.

(b) *Grievance rights.* As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, and employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

[FR Doc. 88-12948 Filed 6-8-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911, 915, 918, 923, and 982

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service.
ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish assessment rates under Marketing Order Nos. 911, 915, 918, 923, and 982 for the 1988-89 fiscal year established for each order. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the

committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1988, through March 31, 1989 [§ 911.227]; April 1, 1988, through March 31, 1989 [§ 915.227]; March 1, 1988, through February 28, 1989 [§ 918.225]; April 1, 1988, through March 31, 1989 [§ 923.228]; July 1, 1988, through June 30, 1989 [§ 982.333].

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 911 [7 CFR Part 911] regulating the handling of limes grown in Florida; 915 [7 CFR Part 915] regulating the handling of avocados grown in South Florida; 918 [7 CFR Part 918] regulating the handling of fresh peaches grown in Georgia; 923 [7 CFR Part 923] regulating the handling of sweet cherries grown in designated counties in Washington; and 982 [7 CFR Part 982] regulating the handling of filberts/hazelnuts grown in Oregon and Washington. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes, 34 handlers of Florida avocados, 18 handlers of Georgia peaches, 65 handlers of Washington cherries, and 30 handlers of Washington-Oregon filberts/hazelnuts subject to regulations under their respective orders, and approximately 260 Florida lime producers, 300 Florida

avocado producers, 180 Georgia peach producers, 1,200 Washington cherry producers, and 1,000 Washington-Oregon filbert/hazelnut producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (Committee) met on April 13, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$233,500 and an assessment rate of \$0.15 per bushel of fresh limes shipped under M.O. 911. In comparison, 1987-88 fiscal year budgeted expenditures were \$259,000 and the assessment rate was \$0.15 per bushel. Major expenditure categories in the 1988-89 budget are \$108,000 for program administration, \$25,000 for market development, and \$100,500 for research. Assessment income for 1988-89 is expected to total \$210,000, based on shipments of

1,400,000 bushels of limes. Interest income will amount to approximately \$7,000. Committee reserve funds will be available to cover the anticipated \$16,500 deficit for 1988-89.

The Avocado Administrative Committee (Committee) met on April 13, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$193,500 and an assessment rate of \$0.11 per bushel of fresh avocados. In comparison, 1987-88 fiscal year budgeted expenditures were \$200,000 and the assessment rate was \$0.11 per bushel. Major expenditure categories in the 1988-89 budget are \$107,300 for program administration, \$25,000 for market development, and \$61,200 for research. Assessment income for 1988-89 is expected to total \$132,000, based on shipments of 1,200,000 bushels of avocados. Interest income will amount to approximately \$5,000. Committee reserve funds will be available to cover the anticipated \$56,500 deficit for 1988-89.

The Georgia Peach Industry Committee met on April 7, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$14,306.08 and an assessment rate of \$0.005 per bushel of fresh peaches. Assessment income for 1988-89 is expected to total \$6,695 based on shipments of 1,339,000 bushels of peaches. Interest income will amount to approximately \$5,010.08. Committee reserves and other available funds will be available to cover the anticipated \$2,600 deficit for 1988-89.

The Stone Fruit Executive Marketing Committee met on April 14, 1988, and unanimously recommended 1988-89 marketing order expenditures for Washington sweet cherries. Expenditures of \$97,210 and an assessment rate of \$2.50 per ton of sweet cherries under M.O. 923 were recommended. In comparison, 1987-88 budgeted expenditures were \$85,100 and the assessment rate was \$2.00 per ton. On May 16, 1988, the Washington Cherry Marketing Committee met again and revised their assessment rate to \$2.00 per ton of sweet cherries. Assessment income for 1988-89 is estimated at \$88,000 based on a crop estimate of 44,000 tons of cherries. Committee reserves and other funds will be available to cover the anticipated \$9,210 deficit for 1988-89.

The Filbert/Hazelnut Marketing Board (Board) conducted a telephone vote on April 22, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$424,100 and an assessment rate of \$14.00 per ton of filberts/hazelnuts. In comparison, 1987-88 marketing year budgeted

expenditures were \$386,590 and the assessment rate was \$14.00 per ton. Major expenditure categories in the 1988-89 budget are \$63,400 for administration, \$245,000 for promotion, and \$100,000 for the emergency reserve fund. Assessment income for 1988-89 is expected to total \$280,000 based on a crop estimate of 20,000 tons of filberts/hazelnuts. Interest and incidental income is estimated at \$31,000. The Board may expend operational reserve funds of \$113,100 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 911.227, 915.227, 918.225, 923.228, and 982.333, and is based on committee recommendations and other information. A proposed rule was published in the May 13, 1988, issue of the *Federal Register* [53 FR 17056]. Comments on the proposed rule were invited from interested persons until May 23, 1988. One comment was received from the Washington Cherry Marketing Committee, in which they requested the establishment of a revised assessment rate.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publications in the *Federal Register* [4 U.S.C. 553].

List of Subjects in 7 CFR Parts 911, 915, 918, 923, and 982

Avocados, Cherries, Filberts, Florida, Georgia, Hazelnuts, Limes, Marketing agreements and orders, Peaches, Washington.

For the reasons set forth in the preamble, new §§ 911.227, 915.227, 918.225, 923.228, and 982.333 are added as follows:

1. The authority citation for 7 CFR Parts 911, 915, 918, 923, and 982 continues to read as follows:

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

2. New §§ 911.227, 915.227, 918.225, 923.228, and 982.333 are added to read as follows:

Note: These sections will not appear in the Code of Federal Regulations.

PART 911—LIMES GROWN IN FLORIDA

§ 911.227 Expenses and assessment rate.

Expenses of \$233,500 by Florida Lime Administrative Committee are authorized, and an assessment of \$0.15 per bushel of assessable limes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.227 Expenses and assessment rate.

Expenses of \$193,500 by the Avocado Administrative Committee are authorized, and an assessment rate of \$0.11 per bushel of assessable avocados is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 918—FRESH PEACHES GROWN IN GEORGIA

§ 918.225 Expenses and assessment rate.

Expenses of \$14,306.08 by the Industry Committee are authorized, and an assessment rate of \$0.005 per bushel of peaches is established for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.228 Expenses and assessment rate.

Expenses of \$97,210 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of \$2.00 per ton of assessable cherries is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

§ 982.333 Expenses and assessment rate.

Expenses of \$424,100 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at \$0.07 per pound of assessable filberts/hazelnuts for the 1988-89 marketing year ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-13012 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1033 and 1046

[Docket Nos. AO-166-A57 and AO-123-A58]

Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the pooling provisions of the Ohio Valley and Louisville-Lexington-Evansville milk orders. One amendment provides that a pool distributing plant physically located in the Louisville-Lexington-Evansville marketing area would be regulated under that order irrespective of the market in which the plant has a majority of its fluid milk products distribution. A conforming amendment is made in the Ohio Valley order. Also, another amendment pertains only to the Louisville-Lexington-Evansville order. This amendment modifies slightly the method for accounting for excess diversions to nonpool plants. The amendments are based on industry proposals considered at a public hearing held in Louisville, Kentucky, June 30-July 1, 1987. The amendments are necessary to reflect structural changes in the market and to promote orderly and efficient marketing of milk by producers and handlers.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 15, 1987; published June 19, 1987 (52 FR 23306).

Recommended Decision: Issued January 7, 1988; published January 14, 1988 (53 FR 907).

Final Decision: Issued April 20, 1988; published April 26, 1988 (53 FR 14804).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley and Louisville-Lexington-Evansville orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas.

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

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which

is marketed within the marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in each order; and

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

List of Subjects in 7 CFR Parts 1033 and 1046

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1033 and 1046 continues to read as follows:

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

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.56 is amended by revising the first sentence of paragraph (a) through the first comma and adding a new paragraph (c) to read as follows:

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraphs (b) and (c) of this section,

(c) A plant qualified pursuant to § 1033.12(a) which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

3. Section 1046.7 is amended by revising paragraph (e) to read as follows:

§ 1046.7 Pool plant.

(e) The term "pool plant" shall not apply to the following plants:

- (1) A producer-handler plant;
- (2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act, except:
 - (i) A plant that qualifies as a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month; and
 - (ii) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the pooling requirements of another Federal order on the basis of route disposition if the plant is located in the Louisville-Lexington-Evansville marketing area and this order's Class I price applicable at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition; and
- (3) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

4. Section 1046.13 is amended by adding a new paragraph (c)(4) to read as follows:

§ 1046.13 Producer milk.

(c) ***

(4) Any milk diverted in excess of the limits prescribed in paragraph (c)(3) of this section shall not be producer milk.

The diverting handler shall designate the farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

Signed at Washington, DC, on: June 3, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-13013 Filed 6-8-88; 6:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Diagnostic Misadministration Report Form

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for the medical use of byproduct material to indicate the form to be used for reporting diagnostic misadministrations. This action is intended to inform the public of the development and availability of the form that medical licensees must use to meet this reporting requirement.

EFFECTIVE DATE: June 9, 1988.

ADDRESSES: A copy of Form NRC 473 may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies are available from James H. Myers, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-0635.

FOR FURTHER INFORMATION CONTACT: James H. Myers, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-0635.

SUPPLEMENTARY INFORMATION: The NRC amended its regulations for the medical use of byproduct material to require licensees to report certain diagnostic misadministrations to the NRC on a special NRC form. This matter was discussed in the final rule revising 10 CFR Part 35 (51 FR 36932, October 16, 1986).

The NRC staff has developed the form, and the Office of Management and Budget (OMB) has approved its use. The NRC is amending its regulations to insert the form number in the regulatory

text. A copy of the form will be mailed to NRC medical use licensees.

This amendment is a minor administrative change to an existing final rule. It merely adds the form number for an NRC form to the codified rule. The number had been omitted because OMB had not completed its review. Based on this, good cause exists to find that the notice and public procedure provisions of the Administrative Procedure Act are unnecessary pursuant to the exemption provision found in 5 U.S.C. 553(b)(B). Therefore, the amendment is effective upon publication in the Federal Register.

Administrative Statements

Environmental Impact: Categorical Exclusion.

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget under OMB Number 3150-0140.

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

Regulatory Text

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553 the NRC is adopting the following amendment to 10 CFR Part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.33 [Amended]

2. In § 35.33, paragraph (c) is amended by removing footnote 1 and by inserting "Form NRC 473" in place of "Form NRC —" in the second sentence.

Dated at Rockville, MD, this 27th day of May 1988.

For the Nuclear Regulatory Commission.
Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-12965 Filed 6-8-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-23-AD; Amdt. 39-5944]

Airworthiness Directives; Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 87-20-02, Amendment 39-5728, applicable to certain Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes. AD 87-20-02 requires incorporation of the airspeed limitations required by AD 86-21-07 and also adds provisions for removing these limitations with the incorporation of modifications identified in Beech Mandatory Service Bulletin (SB) 2188, dated May 1987. A check of the accuracy of weight and balance data for all airplanes and of the ruddervator static balance for the Models C35 through V35B is also required. The revision specified herein will allow installation of Mike Smith Aero, Inc. (MSA) Tail-Safe external angles per Supplemental Type Certificate (STC) SA1649CE in lieu of the Beech stabilizer reinforcements for Models S35, V35, V35A, and V35B airplanes. This revision will relieve operators of the unnecessary burden of removing or trimming these Tail-Safe angles to accommodate the Beech stabilizer reinforcement.

DATES: *Effective Date:* June 15, 1988.
Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Mandatory Service Bulletin No. 2188, dated May 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, KS 67201-0085; telephone 316-681-7279. This information may be examined at the Rules Docket, FAA Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Yanez, FAA, Wichita Aircraft Certification Office, ACE-120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: This amendment revises AD 87-20-02, Amendment 39-5728 (52 FR 35683; September 23, 1987) applicable to all Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes except those modified per Supplemental Type Certificate (STC) SA2149CE (straight tail conversion). AD 87-20-02 incorporated the airspeed limitations required by DA 86-21-07 to preclude producing airloads within the flight envelope that could result in structural failure of the V-tail. AD 87-20-02 also has provisions for removing these limitations. One provision is the installation of the Beech stabilizer reinforcement. This installation requires the removal or trimming of previous modifications installed by STC. Subsequent to issuance of AD 87-20-02, Mike Smith Aero, Inc. (MSA) performed a structural test that demonstrated that the MSA Tail-Safe modification, installed per STC SA1649CE for Models S35, V35, V35A, and V35B airplanes, is equivalent to the Beech stabilizer reinforcement. This revision to AD 87-20-02 will permit the use of the Tail-Safe modification in lieu of the Beech stabilizer reinforcements.

Therefore, the FAA is revising AD 87-20-02 by allowing the use of the MSA Tail-Safe external angles installed per STC SA1649CE, for Models S35, V35, V35A and V35B airplanes, in lieu of the Beech stabilizer reinforcements. In addition, minor editorial clarifications have been made to the AD. This action relieves an unnecessary burden on those operators which have installed MSA Tail-Safe external angles, imposes no additional burden on any person, and precludes unnecessary modification or alteration of airplanes equipped with Tail-Safe external angles MSA STC SA1649CE. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the

preparation of a Federalism Assessment.

The FAA has determined that this amendment is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to relieve unnecessary economic burden by further modification to the aircraft. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising and reissuing AD 87-20-02, Amendment 39-5728, as follows:

Beech: Applies to all Model 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B (all serial numbers) airplanes certificated in any category except to those Models S35, V35, V35A and V35B airplanes modified per Supplemental Type Certificate (STC) SA2149CE (straight tail conversion).

Compliance: Required as indicated, unless already accomplished.

To minimize the possibility for in-flight failures due to inadequate strength of the V-tail, and/or adverse flight characteristics resulting from operation outside the aft limit of the center of gravity envelope, accomplish the following:

(a) Prior to further flight after the effective date of this AD, unless accomplished per AD 86-21-07:

(1) For Models 35, 35R, A35, B35, C35, D35, E35, F35 or G35:

(A) Fabricate and install on the instrument panel as near as possible to the airspeed indicator and in clear view of the pilot the following placard using letters of 0.10 inch minimum height. "Never exceed speed, V_{NE}"

144 MPH (125 knots) IAS; Maximum structural cruising speed, V_{no} , 135 MPH (117 knots) IAS; Maneuvering speed, V_A , 127 MPH (110 knots) IAS."

(B) Mark the outside surface of the airspeed indicator with lines of approximately 1/16 inch by 3/16 inch as follows:

- (i) Red line at 144 MPH (125 knots), and
- (ii) Yellow line at 135 MPH (117 knots), and
- (iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(C) Place a copy of AD 86-21-07, or AD 87-20-02, or AD 87-20-02R1 in the Pilot's Operating Handbook and FAA approved Airplane Flight Manual (POH/AFM) and observe the specified limits.

(D) Operate the airplane in accordance with these speed limitations.

(2) For Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B:

(A) Fabricate and install on the instrument panel as near as possible to the airspeed indicator and in clear view of the pilot the following placard using letters of 0.10 inch minimum height: "Never exceed speed, V_{ne} , 197 MPH (171 knots) IAS; Maximum structural cruising speed, V_{no} , 177 MPH (154 knots) IAS; Maneuvering speed, V_A , 132 MPH (115 knots) IAS."

(B) Mark the outside surface of the airspeed indicator with lines of approximately 1/16 inch by 3/16 inch as follows:

- (i) Red line at 197 MPH (171 knots), and
- (ii) Yellow line at 177 MPH (154 knots), and
- (iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(C) Place a copy of AD 86-21-07, or AD 87-20-02 or AD 87-20-02R1 in the POH/AFM and observe the specified limits.

(D) Operate the airplane in accordance with these speed limitations.

(3) For all applicable models, fabricate and install on the instrument panel, over the existing "Utility Category" placard the following placard using letters of 0.10 inch minimum height: "Normal Category, Operation Only" and operate the airplane accordingly.

(4) The requirements of paragraph (a) may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him which is not used under Part 121 or 135. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed in FAR 43.9.

(b) Within the next 12 calendar months after the effective date of this AD, for Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B airplanes accomplish the following:

(1) Visually inspect the empennage, aft fuselage and ruddervator control system in accordance with the appropriate kit instructions specified in Beech Service Bulletin (SB) 2188. Perform the following corrective actions as defined by these instructions:

(A) Replace or repair structural components as required.

(B) Set the elevator, rudder and tab system travels, cable tensions and rigging as

specified in the appropriate airplane maintenance or shop manual as referenced in SB 2188.

(2) Remove all external stabilizer reinforcements incorporated per STC SA845GL, SA846GL, SA1650CE, SA2286NM or SA2287NM. Seal or fill any residual holes with appropriate size rivets. The internal stub spar incorporated by SA1649CE and SA1650CE may be retained. The external angles installed per STC SA1649CE may also be retained by properly trimming the leading edge section to permit the installation of the stabilizer reinforcement per paragraph (b)(4) of this AD. For Models S35, V35, V35A and V35B, the external angles installed per STC SA1649CE may be retained in lieu of the stabilizer reinforcement per paragraph (b)(4) of this AD. If any other modification has been incorporated on the stabilizer, notify the Wichita Aircraft Certification Office, telephone (316) 946-4409 prior to accomplishing paragraph (b)(4) of this AD.

(3) Determine the accuracy of the static balance of the ruddervator by reviewing the airplane records. If any repainting, modification, repair to the ruddervators has been made since the last balance, check the static balance of the ruddervator and balance as necessary using the methods and criteria specified in the appropriate Airplane Maintenance or Shop Manual. These manuals are referenced in SB 2188.

(4) Following completion of paragraph (b)(1), (b)(2), and (b)(3) of this AD, install stabilizer reinforcements in accordance with Beech SB2188, unless the Tail-Safe external angles are installed per STC SA1649CE for Models S35, V35, V35A, and V35B. Install warning placards and set elevator nose down trim in accordance with Beech SB 2188 and for Models C35, D35, E35, F35, and G35 replace ruddervator tab control cables with larger diameter cables in accordance with SB 2188.

(5) Place the revision/supplement to the POH/AFM specified in SB 2188 in the airplane. Assure that the correct POH/AFM, as listed in the latest revision to the appropriate Type Certificate Data Sheet (TCDS), is installed in the airplane.

(c) Upon completion of the requirements of paragraph (b) of this AD, as applicable, within the next 12 calendar months after the effective date of this AD, for all 35 Series airplanes determine the accuracy of airplane basic empty weight and balance information using one of the following three methods:

(1) Method Number 1:

(A) Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA approved weighing, or from factory delivery, to date of compliance with this AD.

(B) Inspect the airplane and compare the actual configuration of the airplane to the configuration described in the weight and balance documentation, and

(C) If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g. paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data by using either method number 2 shown

in paragraph (c)(2) of this AD or weigh the airplane as specified in paragraph (c)(3) of this AD.

(2) Method Number 2:

(A) Assemble the following equipment:

(1) One certified platform scale having a range of 750 to 1000 pounds capable of supporting the nose wheel without contacting the rest of the airplane.

(2) One scale ramp of sufficient incline to allow rolling the nose wheel onto the scale.

(3) One gear strut inflation system capable of inflating the gear struts to full extension.

(B) Procedure:

(1) Prepare the airplane for weighing, utilizing steps 2, 3 and 4 of the Weighing Instructions in the Weight and Balance Section of the POH/AFM.

Ensure that the scale and airplane are on a level hangar floor and the aircraft is shielded from any wind.

(2) Inflate the main gear struts to maximum extension and completely deflate the nose strut. Inflate tires to the correct tire pressures as listed in appropriate Maintenance or Shop Manual.

CAUTION: When deflating the nose strut, the aircraft may drop suddenly.

(3) Adjust the height of the scale platform to 12 inches above the hangar floor.

(4) Position the nose wheel onto the scale ensuring that the remainder of the airplane does not contact the scale and verify the proper wheel height. Set the parking brake and/or chock the main wheels.

(5) Record the net weight from the scale.

(6) Remove the nose wheel from the scale.

(7) Adjust the gear struts, per the appropriate Maintenance or Shop Manual, to the proper extension lengths.

(8) Subtract the following unusable, less undrainable, fuel from the current airplane Basic Empty Weight, CG and Moment:

	Weight (lbs)	Arm (in)	Moment (in-lbs)
For all Airplanes; and	34.5	79.1	2,730
In addition, for Airplanes with 10 gallon wing auxiliary tanks; or	5.0	94.0	470
In addition, for Airplanes with 20 gallon auxiliary fuselage tanks	3.0	133.0	399

(9) Multiply the net weight obtained in paragraph (5) by 83.25 to obtain moment.

(10) Divide the weight obtained in paragraph (8) into the moment obtained in paragraph (9) to determine a value for X.

(11) Calculate a value of CG from: CG = 92.50 - 1.01X.

(12) Subtract the CG obtained in paragraph (11) from the CG obtained in paragraph (8).

(13) If the results of paragraph (12) indicate the difference in CG to be less than 0.5 inches, continue to use the basic empty airplane weight and CG data listed in the existing airplane records as the basis for computing the weight and CG for the loaded airplane using the criteria specified in the POH/AFM, Weight and Balance Section.

(14) If the results of paragraph (12) indicate the difference in CG to be more than 0.5 inches, determine the basic empty weight and CG of the airplane using Method Number 3.

Note: Sample Calculation:

Basic Empty Weight (BEW) (lbs.) 2,064.5
Arm (in.) 78.3
Moment (in-lbs.) 161,650

Paragraph (5):
Nose Wheel Weight (lbs.) 341

Weight (lbs)	Arm (in)	Moment (in-lbs)
Paragraph (8):		
2,064.5	78.3	161,650
-34.5	79.1	-2,730
2030.0	(*)	158,920

$$*Arm = \frac{(158920)}{(2030.0)} = 78.29$$

Paragraph (9): Moment = (341 lbs) × (83.25 in) = 28388 in-lbs.

Paragraph (10):

$$X = \frac{(28388 \text{ in-lbs})}{(2030.0 \text{ lb})} = 13.98 \text{ in.}$$

Paragraph (11): CG = 92.50 in. - (1.01) × (13.98 in) = 78.38 in.

Paragraph (12): Difference = (78.29 in) - (78.38 in) = 0.09 in.

Airplane is within xx in tolerance, therefore Paragraph (13) applies. ±0.5 in tolerance, therefore Paragraph (13) applies.

(3) Method Number 3:

(1) Determine the basic empty weight and CG of the empty airplane using the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the POH/AFM, Weight and Balance Section.

(d) Upon completion of the requirements of paragraphs (b) and (c), as applicable, remove the following that were installed in accordance with AD 86-21-07, Amendment 39-5474, or in accordance with paragraph (a) of this AD.

(1) The airspeed placards and airspeed indicator markings, and resume operations observing the original limits.

(2) The copy of AD 86-21-07, or AD 87-20-02, or AD 87-20-02R1 from the POH/AFM.

(3) The "Normal Category Operations Only" placard.

(e) Special Flight Permit may be issued in accordance with FAR 21.197 to operate

airplanes to a base in order to comply with the requirements of paragraph (b) thru (d) of this AD.

(f) An equivalent method of compliance with this AD may be used when approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085 or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106

This amendment revises AD 87-20-02, Amendment 39-5728, which superseded AD 86-21-07, Amendment 39-5474.

This amendment becomes effective on June 15, 1988.

Issued in Kansas City, Missouri, on May 31, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-12929 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-14-AD; Amdt. 39-5955]

Airworthiness Directives; British Aerospace (BAe) PLC Jetstream Model 3101 (Includes Model 3100) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC Jetstream Model 3101 (includes Model 3100) airplanes, which requires the incorporation of instructions into the Airplane Flight Manual (AFM) describing pilot actions to be used in the event of erratic torque/EGT indications, and checks and adjustments, where necessary, of the propeller governor low RPM setting. Dual engine torque oscillations in the range of 40-45% have been reported in an accident in which the prop RPM levers were improperly set for take off. This AD will substantially reduce the tendency for engine torque oscillations due to such improperly positioned RPM levers when engine power is set close to take off power and thus precludes the possibility of degraded performance and loss of airplane control. It also provides

remedial procedures as part of the emergency procedures section of the AFM should such a situation occur due to any cause.

DATES: Effective Date: June 16, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Garrett Engine Division (GED) Service Bulletin (SB) TPE331-76-0023, Revision 1, dated May 6, 1988, applicable to this AD, may be obtained from GED, Post Office Box 5217, Phoenix, Arizona 85010; Telephone (602) 225-2548, or British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. BAe Jetstream 3101 Document Number HP.4.10, Advance Amendment Bulletin, Issue 1, dated April 13, 1988, applicable to this AD may be obtained from British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. John P. Dow, Sr., FAA, Project Support Section Foreign, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: Dual engine torque oscillations in the range of 40-45% have been reported in an accident involving a BAe Model 3101 airplane in which the prop RPM levers were improperly set for takeoff. These dynamic oscillations resulted from an interaction of the hydromechanical fuel controller and the propeller governor while the engine power was set close to the thermodynamic limit of the engine. Investigation into this complex phenomenon by the airplane manufacturer has shown that divergent oscillations may occur at a propeller governor RPM setting of 94% when the power lever is advanced to maximum power. Resetting the propeller governor low RPM setting to 95.5%-96.0% will reduce the tendency for severe torque oscillations in most cases, except where a rapid power lever movement is made. As a result, GED has issued SB TPE331-76-0023, Revision 1, dated May 6, 1988 which provides instructions on how to check the propeller governor low RPM setting and how to adjust that setting if needed.

In addition, the procedures incorporated into the Emergency

Procedures section of the AFM provide crew procedures to properly respond to conditions of erratic torque/EGT or indications of erratic torque/EGT due to any cause. The Civil Aviation Authority of the United Kingdom (CAA-UK) has issued Advance Amendment Bulletin, Issue 1, dated April 13, 1988, as an amendment to the AFM which incorporates the erratic torque/EGT indications procedures into the Emergency Procedures Section of the AFM. The CAA-UK, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified this amendment as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Garrett SB TPE331-76-0023, Revision 1, dated May 6, 1988, as well as the issuance of Advance Amendment Bulletin, Issue 1, dated April 13, 1988, and the mandatory classification of this amendment by CAA-UK.

Based on the foregoing, the FAA has determined that the conditions described herein are unsafe conditions that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued making compliance with Garrett SB TPE331-76-0023, Revision 1, dated May 6, 1988, and the insertion of the Advance Amendment into the BAe Jetstream Model 3101 AFM mandatory on all BAe PLC Jetstream Model 3101 (includes Model 3100) airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same

subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace (BAe) PLC: Applies to Jetstream Model 3101 (includes Model 3100) (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated unless already accomplished.

To reduce the possibility of engine torque oscillations resulting from improperly set propeller RPM levers and to provide remedial procedures if such a situation does occur from any cause, accomplish the following:

(a) For airplanes with in-service engines, within the next 50 hours time-in-service after the effective date of this AD, or prior to further flight for airplanes when any overhauled or replacement engine or propeller governor is installed, check the propeller governor low RPM setting as described in Section 2, Accomplishment Instructions, of Garrett Engine Division

(GED) Service Bulletin (SB) TPE331-76-0023, Revision 1, dated May 6, 1988.

(1) If the low RPM setting is in between 95.5% to 96%, inclusive, no further action is required per this paragraph of the AD unless a replacement engine or propeller governor is subsequently installed.

(2) If the low RPM setting is not in between 95.5% or 96% inclusive, prior to further flight adjust the low RPM setting to the range of 95.5% to 96% as described in the above SB.

(b) Within 7 calendar days from the effective date of the AD, insert Advance Amendment Bulletin No. 1, dated April 13, 1988, into the Airplane Flight Manual, BAe Document No. HP.4.10, facing Page 4, Section 3, and operate the airplane accordingly.

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

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium; Telephone (322) 513.3830 ext. 2710/2711.

All persons affected by this directive may obtain copies of the appropriate document(s) referred to herein upon request to Garrett Engine Division, Post Office Box 5217, Phoenix, Arizona 85010; Telephone (602) 225-2548, or British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on June 16, 1988.

Issued in Kansas City, Missouri, on June 1, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-12928 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 82F-0254]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Glyceryl Tristearate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of glyceryl tristearate. This

action responds to a petition submitted by Kay-Fries, Inc.

DATES: Effective June 9, 1988; objections by July 11, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 3, 1982 (46 FR 38989), FDA announced that a petition (FAP 2A3639) had been filed by Kay-Fries, Inc., 10 Link Drive, Rockleigh, NJ 07647, proposing that the food additive regulations be amended to provide for the safe use of glycerol tristearate as a crystallization accelerator, lubricant, release agent, and compressing aid to be used in or on food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed uses of this food additive are safe, and that the regulations should be amended to allow for the use of this substance as a crystallization accelerator, formulation aid, lubricant and release agent, surface-finishing agent, and winterization and fractionation aid for use in or on food. FDA has listed this additive under the name "glyceryl tristearate" to reflect conventional chemical nomenclature practice.

Some of the technical effects for which FDA is regulating the additive (formulation aid, surface-finishing agent, and winterization and fractionation aid) were not listed in the filing notice. The agency is taking this action because, after reviewing the petition, it concluded that it was necessary to include these technical effects in the regulations to fully reflect the uses requested by the petitioner. Furthermore, the agency did not include the technical effect "compressing aid" because that technical effect is included under the term "formulation aid," as defined in § 170.3(o)(14) (21 CFR 170.3(o)(14)).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for

public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

Any person who will be adversely affected by this regulation may at any time on or before July 11, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Director or Deputy Director of the Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.811 is added to Subpart I to read as follows:

§ 172.811 Glyceryl tristearate.

The food additive glyceryl tristearate may be safely used in food in accordance with the following prescribed conditions:

(a) The food additive (CAS Reg. No. 555-43-1) is prepared by reacting stearic acid with glycerol in the presence of a suitable catalyst.

(b) The food additive meets the following specifications:

Acid number	Not to exceed 0.5.
Iodine number	Not to exceed 1.0.
Saponification number	188-192.
Hydroxyl number	Not to exceed 5.0.
Free glycerol content	Not to exceed 0.5 percent.
Unsaponifiable matter	Not to exceed 0.5 percent.
Melting point (Class II)	69 °C-71 °C.

(c) The additive is used or intended for use as follows when standards of identity established under section 401 of the Act do not preclude such use:

Uses	Limitations
1. As a crystallization accelerator in cocoa products, in imitation chocolate, and in compound coatings.	Not to exceed 1 percent of the combined weight of the formulation.
2. As a formulation aid as defined in § 170.3(o)(14) of this chapter, lubricant and release agent as defined in § 170.3(o)(18) of this chapter, and surface-finishing agent as defined in § 170.3(o)(30) of this chapter in food.	Not to exceed 0.5 percent.
3. As a formulation aid as defined in § 170.3(o)(14) of this chapter in confections.	Not to exceed 3.0 percent of the combined weight of the formulation.
4. As a formulation aid as defined in § 170.3(o)(14) of this chapter in fats and oils as defined in § 170.3 (n)(12) of this chapter.	Not to exceed 1.0 percent of the combined weight of the formulation.
5. As a winterization and fractionation aid in fat and oil processing.	Not to exceed 0.5 percent by weight of the processed fat or oil.

(d) To assure safe use of the additive:

(1) In addition to the other information required by the act, the label or labeling of the additive shall bear the name of the additive.

(2) The label of the additive shall bear adequate directions to provide a final product that complies with the limitations prescribed in paragraph (c) of this section.

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12941 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 201

[Docket No. 87N-0371]

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Reye Syndrome Warning

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making permanent the regulation that requires a Reye syndrome warning on the labeling of oral and rectal over-the-counter (OTC) human drug products containing aspirin. The current regulation expires on June 6, 1988, unless extended by FDA. In addition, the agency is revising the warning statement to state clearly that Reye syndrome is reported to be associated with aspirin. These actions are based primarily on the results of a study by the Public Health Service (PHS) Reye Syndrome Task Force and the report of the Institute of Medicine's Committee on Reye Syndrome and Medication Use. The PHS study confirms earlier reports of an association between Reye syndrome and aspirin use in children and teenagers with chicken pox or flu.

EFFECTIVE DATES: Continuation of the current warning statement effective June 9, 1988; revision of the warning statement effective December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of March 7, 1986 (51 FR 8180), FDA published a final regulation requiring the following labeling statement on oral and rectal OTC drug products containing aspirin:

"WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness." FDA took this action to aid in increasing the public's awareness of the association between the use of aspirin and Reye syndrome¹ and to bring uniformity and consistency to the labeling of aspirin and aspirin-containing drug products in the marketplace. The 1986 regulation was based, in large part, on the results of a "pilot study" conducted by PHS which showed an association between the use of aspirin and the onset of Reye syndrome.

The 1986 final rule also provided that the regulation would expire June 6, 1988, 2 years from the effective date, unless the agency acted to extend it. This 2-year period was to allow for the completion and evaluation of further research by PHS, known as the "main study," into the association between Reye syndrome and various exposure factors, including the use of aspirin.

1. The PHS Main Study.

The PHS main study confirmed the results of the pilot study and found a large, statistically significant association between Reye syndrome in children and teenagers and the ingestion of aspirin during previous illnesses. The PHS report, entitled "Reye Syndrome and Medications—Report of the Main Study," November 12, 1986, was prepared by the PHS Reye Syndrome Task Force (Ref. 1). The PHS report was evaluated by the Institute of Medicine (IOM) of the National Academy of Sciences in a report entitled "The PHS Study of the Reye Syndrome: Review of a Continuing Study—Report Number 6—Review of the PHS Continuing Study by the Committee on the Reye Syndrome and Medications," February 1987 (Ref. 2). A report of the main PHS study was published in the *Journal of the American Medical Association* on April 10, 1987 (Ref. 3). These reports have been placed on display with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 87N-0371. Additional background information may be found in Docket Nos. 82N-0158 and 85N-0553.

The PHS main study concluded that the association between Reye syndrome and aspirin is consistent with estimates

of risk determined in earlier studies and reflects the strength of the epidemiologic association observed in those studies.

The study reinforced the importance of reducing the use of aspirin in the treatment of children and teenagers with chicken pox and flu-like illnesses. FDA believes that the available evidence supports the continuing need to maintain a high level of public awareness of the association between the use of aspirin in children and teenagers with chicken pox and flu and the incidence of Reye syndrome.² Accordingly, based on the results of this PHS research, in the Federal Register of January 22, 1988 (53 FR 1796), FDA published a proposed rule to make permanent the requirement regarding the Reye syndrome warning.

2. Public Education Program

In its efforts to create and maintain a high level of public awareness of the association between the use of aspirin in children and teenagers and the incidence of Reye syndrome, FDA has conducted an extensive public education program in addition to the required warning information on aspirin product labeling. FDA has initiated public educational activities on Reye syndrome for several years, beginning in 1982. Earlier educational efforts were directed at raising the awareness of Reye syndrome among parents of young children. More recently, FDA has focused its educational program towards teenagers who may still be unaware of the association between Reye syndrome and aspirin use for their age group during the flu or chicken pox. Accordingly, during 1987, the agency distributed approximately 40,000 posters to high schools and colleges warning of the association between Reye syndrome and the ingestion of aspirin during illness with the flu or chicken pox. In addition, FDA distributed public service announcements to approximately 2,000 radio stations, and sent advertisements to approximately 11,000 daily and weekly newspapers across the United States, with the message consistently directed toward teenagers.

The aspirin industry, through the Aspirin Foundation of America, has also conducted an extensive public education program during the past several years. Public service announcements were distributed to television and radio stations around the

¹ Reye syndrome is a rare but serious illness affecting children and teenagers. Characteristically, its onset follows illness due to influenza B, influenza A, or chicken pox as the child or teenager appears to be getting well. Reye syndrome is a degenerative disease of the brain; the symptoms include nausea, vomiting, and behavioral changes.

² The preliminary results of another Reye syndrome study, conducted by Yale University, have been presented to FDA. These results support the conclusion of the PHS study. The final report from the Yale study is expected within the next several months.

country, as well as the major networks, beginning in the spring of 1985 and continuing in each of the succeeding three flu seasons. As with the FDA efforts, recent educational initiatives have sought to reach teenage audiences, by featuring teenage television and radio personalities in public service announcements. Several retail grocery and pharmacy stores and chains have also participated in a number of educational efforts regarding Reye syndrome.

3. Decline in Incidence of Reye Syndrome

The Centers for Disease Control has reported that the number of cases of Reye syndrome has declined significantly between 1980 (658 cases) and 1985 (93 cases). Moreover, according to a study published in *Pediatrics* in June 1987 ("National Patterns of Aspirin Use and Reye Syndrome Reporting, United States, 1980 to 1985") (Ref. 4), pediatric aspirin use during that same time also declined. These favorable trends appear to be continuing, with 101 Reye syndrome cases reported for 1986 in the *Morbidity and Mortality Weekly Report* (Ref. 5). Although the data show a decline in Reye syndrome cases over the past few years, the fact that 101 cases were reported as recently as 1986 indicates the continuing need for a clear and uniform Reye syndrome warning on aspirin-containing drug products and for a continued public education program.

II. Highlights of the Final Rule

As described further below, all the comments received on the proposed rule expressed support for continuing the Reye syndrome warning requirement. The final rule, therefore, makes permanent the requirement that all orally and rectally administered OTC aspirin products bear an appropriate Reye syndrome warning.

The final regulation revises the warning statement to make clear that aspirin use in children and teenagers has been reported to be associated with Reye syndrome. Specifically, the final regulation amends the previous warning by adding the phrase "reported to be associated with aspirin" at the end, so that the new Reye syndrome warning reads as follows: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin." FDA believes the revision is appropriate and necessary to reflect the PHS study finding of a large, statistically significant association between Reye

syndrome and the ingestion of aspirin during chicken pox or flu. As with the 1986 regulation, this revised warning, once fully implemented, will provide consumers with a clear and consistent message and will continue to ensure consistency and uniformity in the marketplace.

The final rule also continues the requirement in the 1986 regulation that the Reye syndrome warning be "prominent." Such prominence is achieved, in part, by the regulation's continuing requirement that the Reye syndrome warning be the first warning on the label under the "WARNINGS" heading. In addition, in order to call consumers' attention to the revised wording of the Reye syndrome warning, FDA is interpreting the requirement for prominence as requiring, for a period of 1 year, an attention-getting statement on the principal display panel of the product.

Finally, the revised warning is required to appear on affected product packages that are initially introduced or initially delivered for introduction into interstate commerce by December 9, 1988. Until the effective date of the revised Reye syndrome warning, the current Reye syndrome warning requirement remains in effect.

III. Comments

The proposal provided 60 days for public comment. FDA received 17 comments on the proposed rule. The comments were submitted by drug companies, pharmaceutical trade associations, consumer groups, professional medical associations, congressional representatives, individual health practitioners, and groups representing the interests of victims of Reye syndrome. All comments generally supported a continued requirement for a Reye syndrome warning. A summary of the comments received by FDA during the comment period and the agency's response to them follows:

1. Text of Warning Statement

Several comments expressed concern about the precise language of the warning statement. The major concern raised was that the warning should be revised to make clear the concept of an association between Reye syndrome and aspirin use. One comment also recommended that the warning's reference to "chicken pox or flu symptoms" be removed, contending that reports of Reye syndrome associated with aspirin use have not been limited to patients suffering from varicella or influenza. Another comment urged that the warning note the potential fatal

consequences of Reye syndrome. This comment argued that individuals do not always appreciate the seriousness of a warning unless it discloses the consequences that can result if the warning is not heeded.

FDA agrees with the suggestion that the warning statement should be revised to make clear that aspirin use in children has been reported to be associated with Reye syndrome. Now that the PHS study has been completed and has reported a large, statistically significant association between Reye syndrome and aspirin use, FDA believes it is appropriate and necessary that the warning statement indicate this association. Accordingly, the warning statement has been revised to read: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin."

FDA does not believe that the other issues raised by the comments warrant changes in the final rule. FDA believes it appropriate at this time that the warning continue to refer to "chicken pox and flu symptoms" because these symptoms were the symptoms of most of the antecedent illnesses in the PHS study on which FDA is relying as the scientific justification for the warning requirement. In addition, FDA believes that the warning's reference to Reye syndrome as a "serious illness" is sufficient for consumers to appreciate the medical importance of the warning statement. Accordingly, based on the data available at this time, FDA does not believe that further changes to the warning statement in the final rule are now necessary.

2. Prominence of Required Warning

Several comments suggested that the required Reye syndrome warning be given more prominence on aspirin drug product labeling. Comments variously urged that the warning statement be made conspicuous through large type size or be set off by use of a contrasting color. One comment recommended that the entire warning statement be boxed.

FDA agrees that it is essential to bring the Reye syndrome warning to the attention of the consumer. In order to achieve this, the final rule continues the requirement in the current regulation that the Reye syndrome warning appear "prominently" on the label. This includes the requirements that the Reye syndrome warning appear as the first warning on all labeling of aspirin drug products under the heading "Warnings"; that the warning must appear on the

immediate container label and on the retail package; and that the warning must appear on all product labeling that contains warnings. These provisions thus help assure that the warning statement will be seen and read by the consumer.

In addition, because the text of the Reye syndrome warning is being revised, FDA interprets the "prominence" requirement in the regulations (21 CFR 201.15 and 201.315(h)(1)), in the unique circumstances presented here, as requiring that the principal display panel call consumers' attention to the new warning. Specifically, FDA interprets this as requiring manufacturers of aspirin and aspirin-containing drug products to provide an attention-getting statement, such as a "flag," alerting consumers to the revised Reye syndrome warning. A phrase using the words "new" and "warning," such as one of the following phrases, should be used: (1) "See new warning for children/teens"; (2) "Read new label warning"; or (3) "Read new warning for children/teens." To assure that consumers are alerted to the new warning, the language of the attention-getting statement must: (i) Appear on the principal display panel; (ii) be carried in type size which is conspicuous; and (iii) be carried for 1 year after the revised Reye syndrome warning statement is added to the labeling. For that 1-year period, FDA will view as misbranded any aspirin or aspirin-containing OTC drug product whose principal display panel fails to contain an appropriate attention-getting statement.

FDA is not prescribing a minimum type size or use of contrasting color for the warning. However, under section 502(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(c)), a drug is misbranded if a required labeling statement is not sufficiently prominent to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Agency regulations state that a labeling statement may lack the prominence and conspicuousness required by section 502(c) of the act by reason, among others, of "[s]mallness or style of type in which such * * * statement * * * appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter." (21 CFR 201.15(a)(6).) In its surveillance of OTC drug products FDA routinely examines the warning statements on aspirin products to be sure that these requirements regarding prominence and

conspicuousness of the warning statements have been met.

3. Australian Study

One comment said the proposed warning statement is acceptable as currently worded and advised against changing the language to make it more stringent. The comment was reacting to a letter referenced in the proposal which advocated a stronger warning statement. The comment contended that the association between Reye syndrome and aspirin is not supported by all studies. Specifically, the comment referred to an Australian study that found no correlation between the use of aspirin and the occurrence of Reye syndrome. The comment concluded that the current warning statement is sufficient in light of the lack of complete agreement among the studies.

FDA does not find the results of the Australian study cited by the comment to be persuasive. The Australian study, reported in *Pediatrics* (Ref. 6), is a retrospective review of medical records of patients hospitalized during a 10-year period between 1973 and 1982. Unlike the PHS study, the Australian study was not controlled. Moreover, medication histories for the period before hospitalization were based on chart reviews, a less reliable method of gathering data than that followed in the PHS study. The reported cases in the Australian study were predominantly in a very young age group, in which metabolic errors may be indistinguishable from Reye syndrome. Therefore, the identification of cases as Reye syndrome cases in the Australian study is questionable. The approach of applying new criteria to a review of older medical records is certainly not as reliable as the rigorous approach prospectively developed and applied in the PHS studies. The agency continues to believe that the evidence from research to date clearly indicates a strong association between Reye syndrome and the ingestion of aspirin.

4. Adult-only Aspirin

One comment suggested that FDA permit labeling for aspirin-containing drug products that are not intended for use by children or teenagers to bear this special warning statement: "Warning: This medicine is not for children or teenagers. Children and teenagers should not use this medicine because of concerns about Reye Syndrome, a rare but serious illness."

FDA does not agree with this suggestion. As stated more fully in the proposal of December 17, 1985 (50 FR 51400), FDA believes that the public interest is best served by assuring that

the same warning statement is used on all products covered by the regulation. This approach eliminates the potential for consumers being confused by various forms of the warning statement.

5. Other Salicylates

Another comment recommended that the labeling warning statement be required not only for aspirin and aspirin-containing drug products, but for all products containing salicylates.

FDA notes that the scientific research to date, on which the Reye syndrome warning statement requirement is based, focuses on the association between Reye syndrome and aspirin, rather than on the broader category of drug products containing nonaspirin salicylates. Indeed, the PHS study reported that there were too few subjects with reported exposures to nonaspirin salicylates for a meaningful analysis. FDA believes at the present time that priority must be given to continuing the warning on aspirin and aspirin-containing products. FDA will consider extending the scope of the warning requirement to nonaspirin salicylates at some time in the future, if warranted by further research or other appropriate information.

6. Changing the Marketing Status of Certain Aspirin Products

Several comments suggested that FDA require that aspirin be removed as an ingredient from compounds that may be used by individuals under 21 years of age. Another comment proposed that aspirin be available for children and adolescents only under a physician's prescription.

FDA believes that continuing to require a Reye syndrome warning statement on aspirin and aspirin-containing OTC drug products is sufficient and that the more drastic measures of banning use of aspirin in products for individuals under 21 years of age or limiting such products to prescription use are unnecessary. As noted, the latest epidemiological data indicate a marked decline in the incidence of Reye syndrome among children and adolescents since 1980. FDA does not believe that removing aspirin from compounds used by individuals under 21 years of age would be justifiable because other aspirin-containing compounds would still be readily available for administration to children and teenagers. Moreover, the agency believes that OTC aspirin-containing products properly labeled with the Reye syndrome warning statement can be safely used in the proper circumstances by individuals

under 21 years of age. Therefore, FDA disagrees with the suggestion that aspirin for individuals under 21 years of age be made available only under a physician's prescription.

7. Labeling in Spanish

Two comments suggested that the current warning statement would be more effective if it were also required to be in Spanish.

Under FDA labeling regulations (21 CFR 201.15(c)), labeling may be written in the predominant local language when it is distributed solely in the Commonwealth of Puerto Rico or in a Territory where the predominant language is one other than English. Although in the 50 states all required labeling must appear in English, the regulations do not preclude the distribution of labeling in a language other than English, in a special format, or in Braille along with the conventional English language labeling. FDA encourages the preparation of labeling to meet the needs of non-English speaking or special user populations so long as such labeling fully complies with agency regulations.

Effective Dates

The agency believes it is of the utmost importance that there be no time gap in the requirement for a Reye syndrome warning statement on aspirin and aspirin-containing drug products. The available evidence supports the continuing need to maintain a high level of public awareness of the risks of use of aspirin in children and teenagers. In addition, no additional costs associated with labeling changes would result from this action, since it would simply require the continued use of labeling already prepared. Because of the importance to the public health of assuring that the labeling of all oral and rectal OTC aspirin products bears a Reye syndrome warning, the Commissioner finds good cause for making effective immediately that part of this final rule which makes a Reye syndrome warning statement a permanent requirement. Accordingly, § 201.314 is revised by deleting paragraph (h)(5) effective June 9, 1988.

This final rule also amends the warning statement to read: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin." To provide aspirin drug product manufacturers with adequate lead time to make the necessary printing changes, this provision is effective December 9, 1988. After December 9, 1988, any orally or rectally administered

aspirin or aspirin-containing product that does not contain the revised warning statement and that is initially introduced or initially delivered for introduction into interstate commerce is misbranded under sections 201(n) and 502 (a) and (f) of the act (21 U.S.C. 321(n) and 352 (a) and (f)). As noted earlier, until the effective date of the revised Reye syndrome warning, the current Reye syndrome warning requirement remains in effect.

Also as noted in the response to comment number 2 above, after December 9, 1988, FDA will view as misbranded under section 502 of the act any aspirin drug product subject to this regulation that is initially introduced or initially delivered for introduction into interstate commerce and that does not contain an appropriate attention-getting statement on the principal display panel. To assure that consumers are alerted to the new warning statement for at least the equivalent of a single flu season, the attention-getting statement is to be carried on the principal display panel of each product subject to this regulation that is initially introduced or initially delivered for introduction into interstate commerce until December 11, 1989.

FDA believes that a 6-month effective date for the revised warning statement gives manufacturers sufficient time to make the required labeling changes. FDA recognizes, however, that there may be a few small manufacturers for whom, for various financial or other reasons, it is impossible to comply with the revised labeling provision of this final rule by the effective date. In these unusual circumstances, FDA will consider requests for limited extensions. Such requests should be sent to Office of Compliance, Center for Drug Evaluation and Research (HFD-300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and should document both the need for an extension and the duration of time requested.

III. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act. This regulation requires manufacturers to incur costs for making one-time typesetting changes to the Reye syndrome warning statement in the product label. The warning statement appears on the immediate container label and, in those cases where the immediate container is not the retail package, also on the retail package label. In addition, the warning statement must appear on any labeling that

contains warnings. Therefore, this action may require one-time typesetting changes for as many as three labels per product.

In addition, this regulation requires manufacturers to incur costs for making one-time typesetting changes to the principal display panel on a product's label to include an attention-getting statement or flag bringing to the consumer's attention the warning statement.

Any costs incurred by manufacturers as a result of discarding outdated label inventories would be negligible because the regulation gives 6 months of update labels before products are initially introduced or initially delivered for introduction into interstate commerce.

FDA estimates that the regulation will impose direct one-time costs associated with changing product labels that total less than \$6 million. Therefore, the agency has determined that the final rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. References

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

- (1) "Reye Syndrome and Medications—Report of the Main Study," Public Health Service Reye Syndrome Task Force, November 12, 1986.
- (2) "The PHS Study of the Reye Syndrome: Review of a Continuing Study—Report Number 6—Review of the PHS Continuing Study by the Committee on the Reye Syndrome and Medications," Institute of Medicine of the National Academy of Sciences, February 1987.
- (3) Hurwitz, E.S., et al., "Public Health Service Study of Reye's Syndrome and Medications, Report of the Main Study," *Journal of the American Medical Association*, 257(14): 1905-1911, 1987.
- (4) Arrowsmith, J.B., et al., "National Patterns of Aspirin Use and Reye Syndrome Reporting, United States, 1980 to 1985," *Pediatrics*, 79:858-863, June 1987.

(5) *Morbidity and Mortality Weekly Report*, Vol. 36, No. 41, October 23, 1987.

(6) Orlowski, James P., et al., "A Catch in the Rye," *Pediatrics*, 80:638-642, November 1987, C0001, Docket No. 87N-0371, Dockets Management Branch.

List of Subjects in 21 CFR Part 201

Drug, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 continues to read as follows:

Authority: Secs. 501, 502, 701, 52 Stat. 1049-1051 as amended, 1055-1056 as amended (2 U.S.C. 351, 352, 371); 21 CFR 5.10; § 201.21 also issued under secs. 301, 505, 52 Stat. 1042-1043 as amended, 1052-1053 as amended (21 U.S.C. 331, 355).

2. Section 201.314 is amended by revising the warning statement in paragraph (h)(1) and by removing (h)(5) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

(h)(1) * * * "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin."

Dated: May 25, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-13058 Filed 6-7-88; 11:35 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 82-17, Notice 3]

Alternate Designs for Bridges

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of policy statement.

SUMMARY: This notice provides a restatement of FHWA policy requiring the development of alternate designs for major bridges to be constructed with Federal-aid highway funds. The policy statement includes modifications which are based on an analysis of data considered over a period of 9 years concerning alternate designs.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert L. Nickerson, Review and Design Branch, Bridge Division, (202) 366-4592, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

On December 4, 1979, the FHWA issued a Technical Advisory [TA] entitled *Alternate Bridge Designs*. This Technical Advisory was intended to stimulate competition in the design of safe and economical bridge structures and, at the same time, through the competitive bidding process, to take advantage of the prevailing economic conditions which would provide a finished structure at the lowest possible cost without sacrificing safety, quality, or aesthetics.

A memorandum was issued to all Regional Federal Highway Administrators on April 22, 1981, to strengthen FHWA's effort in promoting the use of alternate bridge designs among all State and local governments, including those that have adopted Certification Acceptance. On September 23, 1981, a second memorandum to all Regional Federal Highway Administrators requested each division office to review and revise its administrative procedures to ensure that alternate bridge designs would be incorporated in all major bridge projects. Guidelines were presented in still a third memorandum on June 16, 1982, to all Regional Federal Highway Administrators, so that FHWA field offices could take appropriate measures to assure themselves that the spirit and intent of alternate bridge designs were being followed. On May 12, 1983, the FHWA published a Notice of policy statement [48 FR 21409] which replaced the existing TA with a consolidated formal FHWA policy on alternate bridge designs.

Discussion

With over 9 years experience with the use of alternate designs for well over 100 major bridges, an in-depth review of the results of this policy was performed with the clear conclusion that the policy has resulted in more cost-effective designs and better use of the highway tax dollar.

Project specific data, including design costs, engineering estimates and low bids, were received for 128 projects during the years 1979 through 1987. These projects had an average bid cost of \$16 million representing over \$2 billion worth of work that were bid with alternates in 39 different States with low

bids ranging from \$1.5 million to \$88 million. For completed projects, cost data was reviewed on construction engineering, claims and overruns. An analysis of this data was performed in numerous ways. The following summarizes the more significant results:

1. The term "saving" to be used as a measure of effectiveness of this policy, can be defined different ways:

a. As the difference between the lowest bid received for each of the two alternates.

b. As the difference between the lowest bid received and the lowest estimate.

c. As the difference between the lowest bid for one alternate and the lowest bid for the other alternate adding the design fee of the "losing" alternate to the difference.

d. Same as paragraph "c" above, but also adding the difference in construction engineering, if any, that is identifiable for different types of bridges.

Using any of the above methods, the data clearly indicates substantial savings are accruing as a result of this policy. Complete data was available on only 47 projects which allowed a determination of savings in paragraph "d" above to be made. For these projects, a 3 percent of low bid "penalty" was assessed to any bridge with a concrete low bid (data indicates construction engineering for concrete bridges is an average of 3 percent higher than for steel bridges; this can be attributable to the "state-of-the-art" type of construction being used, e.g., cable stayed and segmental). This sample of the data indicates an average savings per project of over \$2 million!

There are also less quantifiable savings, such as, does the presence of an alternate result in lower bids for both types? Of the 128 projects, the lowest bid was lower than the lowest final estimate in over 75 percent of the time. This would indicate the presence of alternates in reducing bridge prices. Also, the presence of an alternate involves material suppliers and subcontractors in the pre-bid phase, allowing the contractor to further reduce his proposal amount to be more competitive with the alternate design.

2. The decision to use or not use alternate designs is made at the beginning of the design phase when estimates of bridge costs are, at best, crude. Since we have to assume that the estimates prepared at bidding time are more representative of anticipated costs, it is noteworthy that over 25 percent of the time, the type of bridge with the lowest estimate was not the bridge type

with the lowest bid. Thus, using estimates as the only measure to determine type of bridge for a given location would have a very significant error rate. Final estimates varied from 74 percent to 157 percent of the low bid.

3. There is no "clear" trend discernible in the data indicating advantages of: one type of bridge over another; state versus consultant designs; change in pattern over the 9 year period; or, one material over the other.

Using this above mentioned analysis as a base, the current FHWA policy, as detailed in 48 FR 21409 was reviewed to determine if modifications were appropriate. One change resulting from this review is the change from \$5 million to \$10 million as the minimum size structure for which alternate designs must be considered. This revision is based on the review findings that the amount saved per structure may not be justified for the lesser cost structures considering the design fees and time involved in the preparation of another set of plans. However, we still suggest that the Highway Department consider alternate designs for the lower cost structures in appropriate locations, or utilize contractor redesign options.

In addition to the above, the following changes to the existing policy are being made:

1. Paragraph number 4 indicates alternate designs are required when estimates are "reasonably" close to each other. The word "reasonably" is subject to wide interpretation. The results of this review, as indicated above show that estimating accuracy is not, by itself, a very good basis for making this determination. Therefore, this paragraph is deleted, and a requirement for estimates to be prepared for all alternates has been added. In the past, estimates were not provided for all alternates preventing use of this information in the decision making process.

2. The reference to value engineering in paragraph number 5 has been deleted. FHWA 6-1-1-9 adequately addresses this issue.

3. The reference to alternate structural components in paragraph number 6 has been deleted. These are items that should be addressed in all bridge reviews, not just major bridges.

4. The requirement for submission of a State plan for further project development in paragraph number 8 has been deleted. This is not for pertinent to alternate designs.

5. A new paragraph has been added to insure that the alternate structures will be designed on the same basis or philosophy. This ensures equal

treatment of the various materials being considered for the design.

Based on the aforementioned analysis, the FHWA is revising its policy on alternate designs and strategies in the process of selecting the type of bridge to be constructed.

The final FHWA policy is as follows:

1. For bridges with estimated construction costs greater than \$10 million, preliminary plan development should be based on engineering and economic evaluation of acceptable alternate designs.

2. Alternate designs should consider the utilization of competitive materials and/or structural types.

3. Designs prepared for each alternate shall be prepared using the same design philosophy (i.e., load factor design, finite element, etc.) for each. In addition, the design/construction requirements for the entire bridge (substructure, foundations, deck) shall be designed with compatible requirements.

4. Economic evaluation of preliminary estimates should take into consideration, to the maximum extent possible, the relative accuracy of estimates for state-of-the-art type methods of construction.

5. Estimates are to be prepared for all alternate designs being studied at the preliminary engineering phase.

6. A determination of FHWA approval and participation in the development of alternate or simple project plans, specifications and estimates for bridges will be made after evaluation of a State's submittal of preliminary bridge plans and cost studies. Recognizing that the States are experienced and have broad expertise in factors pertinent to bridge type selection in their States, the FHWA will review comprehensive State studies and subsequent recommendations as a primary factor in reaching preliminary bridge plan approval decisions. At the same time, FHWA approvals will be based upon the need to ensure safe, efficient and cost-effective bridge projects which meet the aesthetic and structural requirements of the site and are based upon the latest proven technology and techniques.

7. This policy shall not be interpreted as deterring any State or FHWA field office from considering alternate designs for any other type or classification of structure which they would consider appropriate.

This policy is written with the intent of taking advantage of the evolving state-of-the-art of bridge construction and fluctuating economic conditions in the market place while not compromising sound engineering, safety, quality control, or aesthetics.

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

Issued on: June 3, 1988.

Robert E. Farris,
Deputy Administrator.

[FR Doc. 88-13008 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3394-3; NC-036]

Approval and Promulgation of Implementation Plans; North Carolina; Short Term Compliance Method for SO₂

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by the State of North Carolina on December 15, 1987. This revision establishes procedures for compliance with SO₂ emissions limits for fuel-burning sources that would ensure protection of the short-term National Ambient Air Quality Standards (NAAQS) for SO₂.

DATES: This action will be effective August 8, 1988, unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

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

EPA Region IV, Air Programs Branch,
345 Courtland Street NE., Atlanta,
Georgia 30365.

Public Information Reference Unit,
Environmental Protection Agency, 401
M Street SW., Washington, DC 20460.
Air Quality Section, Division of
Environmental Management, North
Carolina Department of Natural
Resources and Community
Development, 512 North Salisbury
Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT:
Gregg M. Worley of EPA Region IV at
the above address and telephone
number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On
December 7, 1982 (47 FR 54934), EPA
approved, for all but 24 sources in the

State of North Carolina, a revision to the State's regulation 15 NCAC 2D.0516 which relaxed the SO₂ limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO₂ emissions for all fuel-burning sources from 2.3 pounds per million BTU heat input (lb/MBTU) to 1.6 lb/MBTU by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO₂ stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, Federal Register notice that if future modeling could show that the relaxed SO₂ limit of 2.3 lb/MBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

In its review of the State's submittal for two of these sources, EPA became aware of deficiencies in North Carolina's compliance test method for SO₂. The regulation, 15 NCAC 2D.0501(c)(4), gave fuel burning sources subject to compliance determinations for sulfur dioxide the option of determining compliance via stack sampling or fuel sulfur analysis. The method used for fuel sampling, however, did not assure compliance with the short-term SO₂ NAAQS.

Regulation 2D.0501, Compliance with Emission Control Standards, was originally federally approved on May 31, 1972 (37 FR 10884), and has since had 13 revisions federally approved. The ninth of these revisions, which added section (c)(4), was federally approved December 19, 1986 (51 FR 45468). Paragraph (c)(4) was then amended to specify the testing methods for fuel analysis. This amendment was federally approved on November 19, 1986 (51 FR 41786).

As a result of its review, EPA informed North Carolina that the regulation should require that any source choosing fuel analysis must do the analysis in such a manner that the NAAQS will be adequately protected. In response to EPA's findings, North Carolina amended their rule 15 NCAC 2D.0501(c)(4) and submitted it to EPA for approval on December 15, 1987. Also contained in this submittal were changes to the Part II Visibility Plan and requests for delegations of authority for NSPS and NESHAP revisions. The visibility portion will be covered in another notice while the NSPS and NESHAP revisions will go through the normal delegation process.

The revised rule has been reviewed by EPA and deemed acceptable because it assures that the short-term SO₂ standards will be protected. It specifies that the fuel sample to be tested is a composite of at least three or twenty-

four samples taken at equal time intervals from the fuel being burned over a three-hour or twenty-four-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded. It specifies how the test is to be carried out for compliance purposes. The new rule does not require sources which are fuel testing as part of a continuous monitoring program to use the same procedure as those fuel testing for compliance purposes. The rule also requires that the compliance test be done at least once per year.

Final Action

EPA is approving revisions to North Carolina's regulation 15 NCAC 2D.0501(c)(4), which details procedures for demonstrating compliance with sulfur dioxide emission limits from fuel-burning sources. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 8, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 8, 1988.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant 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.

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 8, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Date: June 3, 1988.

Lee M. Thomas,
Administrator.

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

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(57) Revisions to 15 NCAC 2D.0501(c)(4) were submitted by the North Carolina Department of Natural Resources and Community Development on December 15, 1987.

(i) Incorporation by reference.

(A) Letter of December 15, 1987, to the Environmental Protection Agency from the North Carolina Department of Natural Resources and Community Development and revised paragraph (c)(4) of 15 NCAC 2D.0501, adopted by the North Carolina Environmental Management Commission on December 10, 1987.

(ii) Additional material—none.

[FR Doc. 88-12960 Filed 6-8-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3394-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule denying petition and notice of policy determination.

SUMMARY: On February 5, 1988, a panel of the United States Court of Appeals for the District of Columbia Circuit unanimously remanded a final rule of the Environmental Protection Agency, determining that the Agency had failed to comply with the requirements of the Administrative Procedure Act, 5 U.S.C. 553 (1982). *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317 (D.C. Cir. 1988). This notice withdraws the Agency's final rule appearing at 51 Federal Register 41624 (November 18, 1986) denying McLouth's petition and announces the Agency's policy

regarding application of certain models to petitions for exclusion of wastes under 40 CFR 260.20 and 260.22.

EFFECTIVE DATE: June 9, 1988.

ADDRESSES: The RCRA regulatory docket for this notice is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The docket for this notice contains all materials included in the original docket compiled for the Agency's previously published proposed and final rules regarding McLouth Steel Products Corporation. The reference number for this docket is "F-86-CHDP-FFFFF". The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA/Superfund Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For information concerning the remand of the Agency's final decision, contact Josh Sarnoff, Office of General Counsel (LE-132S), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7706. For technical information concerning the Agency's review of McLouth Steel's delisting petition, contact Scott Maid, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION:

I. Withdrawal of Final Rule

On November 18, 1986, the Environmental Protection Agency (EPA or Agency) denied a final exclusion, pursuant to the Resource Conservation and Recovery Act (RCRA) 3001(f), 42 U.S.C. 6921(f), and to 40 CFR 260.20 and 260.22, to McLouth Steel Product Corporation (McLouth) for its dust/sludge from the primary production of steel in electric furnaces (currently listed as EPA Hazardous Waste No. K061) generated at its Trenton, Michigan facility. 51 *Federal Register* 41624 (November 18, 1986). In reaching this decision, EPA applied a mathematical Vertical and Horizontal Spread (VHS) model to predict the concentrations of hazardous constituents that might escape from this waste into ground water. McLouth filed a petition for review of this rulemaking with the United States Court of Appeals for the District of Columbia Circuit challenging the Agency's action on numerous grounds.

On February 5, 1988, a unanimous panel of the Court of Appeals held for McLouth, finding that the Agency had given "the effect of a rule to its 'VHS model' * * * without having exposed the model to the comment opportunities required for rules by the Administrative Procedure Act, 5 U.S.C. 553 (1982)." 838 F.2d 1317, 1319 (D.C. Cir. 1988). The Court remanded the Agency's decision. Therefore, the Agency is today withdrawing its final decision to deny McLouth's petition for exclusion. As a result of the remand, the Agency will re-evaluate McLouth's delisting petition in a manner consistent with the court's opinion. However, in accordance with the Court's decision, McLouth must continue to treat its K061 waste as hazardous unless it is, in the future, granted an exclusion by the Agency for this waste.

II. Agency Policy Regarding Application of Models

In discussing the Agency's options after remand, the Court in *McLouth* stated that it "did not mean to imply that EPA must continue treating the VHS model as a binding rule. EPA may choose to treat the model in the future as a non-binding policy. If it does so, however, it must truly exercise discretion in individual delisting cases, remaining open to all challenges to the use of the VHS model as well as its application in each individual delisting petition." 838 F.2d at 1324. EPA intends to process McLouth's petition consistently with this guidance provided by the Court.

EPA also intends to process other petitions consistently with the Court's guidance. Until such time as EPA determines to promulgate the VHS model (or other models) as a rule, EPA will treat the model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the VHS model where proposed to be applied.

EPA notes that it has also announced the availability of the related Organic Leachate ("OLM") Model. 51 *Federal Register* 41082 (November 13, 1986). As with the VHS model, EPA will treat the OLM model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the OLM model where proposed to be applied.

III. Effective Date

This rule is effective immediately. Because withdrawal of the improperly promulgated final rule of November 18,

1986 is consistent with the decision of the DC Circuit in *McLouth*, providing an immediate effective date for this rule, which withdraws the November 18, 1986 rule, meets the requirements of RCRA 3010(b)(3), 42 U.S.C. 6930(b)(3), and of the Administrative Procedures Act 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The withdrawal of a previously published final denial decision will not impose an economic burden on this facility since it does not affect the manner in which the petitioned waste must be handled. Despite the withdrawal of a denial decision, this facility is to continue managing its waste as hazardous. There is no additional economic impact, therefore, due to today's rule. This notice is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This notice will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment and does not change existing requirements for the management of its waste. The overall economic impact, therefore, on small entities would be small. Accordingly, I hereby certify that this notice will not have a significant economic impact on a substantial number of small entities. This notice, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: June 1, 1988.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-12959 Filed 6-8-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 761 and 796

[OPTS 29000A; FRL-3394-6]

Polychlorinated Biphenyls and Chemical Fate Testing Guidelines; Incorporation by Reference; Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyls regulations, (40 CFR Part 761), and in the Chemical Fate Testing Guidelines, (40 CFR Part 796). Several of the incorporated test methods have been revised by ASTM. In this document, EPA is adding the revised test methods to the regulations and guidelines cited above so that the revised test methods can be used to meet the testing requirements found in those provisions.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202)-554-1404.

SUPPLEMENTARY INFORMATION: On April 5, 1988, EPA issued a proposed rule to update several ASTM test methods which are incorporated by reference, and which have been revised by ASTM. (53 FR 11104). The revised test methods will be used to meet the testing requirements found in the PCB regulations at 40 CFR Part 761 and the Chemical Fate Testing Guidelines found at 40 CFR Part 796.

In the proposed rule, the table of old and new designations for the test methods, showed the new designation for ASTM D 3178 as being "ASTM D 3178-86". This is incorrect. ASTM D 3178 was last revised in 1984, therefore, the correct, and current designation for this test method is "ASTM D 3178." The designation is corrected in this final rule.

EPA allowed interested persons 30 days to comment on the revised test methods. No comments were received, therefore, EPA is adopting the revised test methods as proposed, in accordance

with provisions in 1 CFR Part 51. Copies of the revised test methods may be obtained from the TSCA Public Docket Office, in Room NE-G004, at the address given above.

The designations of the old test methods and the equivalent designations of the new test methods (current versions of the same test methods) are as follows:

New designations	Old designations
ASTM D 93-85.....	ASTM D 93-80.
ASTM D 240-87.....	ASTM D 240-76 (Reapproved 1980).
ASTM D 923-86.....	ASTM D 923-81.
ASTM D 2158-85.....	ASTM D 2158-80.
ASTM D 2879-86.....	ASTM D 2879-75 (Reapproved 1980).
ASTM D 3178-84.....	ASTM D 3178-73 (Reapproved 1979).

A. Executive Order 12291

Under Executive Order 12291 (E.O. 12291), issued February 17, 1981, EPA must judge whether a rule is a major rule and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as that term is defined in section 1(b) of E.O. 12291. Therefore, EPA has not prepared a Regulatory Impact Analysis. This rule has not been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities, and therefore, does not require a regulatory flexibility analysis. This rule merely updates certain American Society for Testing and Materials (ASTM) test methods, which are incorporated by reference in the PCB regulations and in the Chemical Fate Testing Guidelines, to the current version of the same test methods. Since no negative economic impact is expected upon any business entity from the promulgation of this rule, EPA hereby certifies that this rule will not have a significant economic impact on small entities.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*, does not apply to this rule since no information collection and recordkeeping are involved.

List of Subjects in 40 CFR Parts 761 and 796

Environmental protection, Chemicals, Hazardous substances, Health, Labeling, Laboratories, Polychlorinated Biphenyls, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: May 26, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 761—[AMENDED]

1. In Part 761:

a. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

§ 761.19 [Amended]

b. In § 761.19, paragraph (b), the entries "ASTM D 93-80," "ASTM D 240-76 (Reapproved 1980)," "ASTM D 923-81," "ASTM D 2158-80," and "ASTM D 3178-73 (Reapproved 1979)," are revised to read "ASTM D 93-85," "ASTM D 240-87," "ASTM D 923-86," "ASTM D 2158-85," and "ASTM D 3178-84," respectively.

§ 761.60 [Amended]

c. In § 761.60 the following changes are made:

i. In paragraph (a)(3)(iii)(B)(6), the references "ASTM D 93-80," "ASTM D 240-76 (reapproved 1980)," "ASTM D 2158-80," and "ASTM D 3178-73 (reapproved 1979)," are revised to read "ASTM D 93-85," "ASTM D 240-87," "ASTM D 2158-85," and "ASTM D 3178-84," respectively.

ii. In paragraph (g)(1)(ii), the phrase "American Society for Testing and Materials method D-923," is revised to read "ASTM D 923-86."

iii. In paragraph (g)(2)(ii), the phrase "American Society for Testing and Materials method D 923-81," is revised to read "ASTM D 923-86."

§ 761.75 [Amended]

d. In § 761.75, paragraph (b)(8)(iii), the phrase "ASTM Standard D 93-80," is revised to read "ASTM D 93-85."

PART 796—[AMENDED]

2. In Part 796:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 796.1950 [Amended]

b. In § 796.1950, paragraph (b)(2)(i), the phrase "ASTM Method D 2879-75

(Reapproved 1980)," and the phrase "ASTM D 2879-75 (Reapproved 1980)" are both revised to read "ASTM D 2879-86."

[FR Doc. 88-12957 Filed 6-8-88; 8:45 am]

BILLING CODE 6550-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302 and 303

Child Support Enforcement Program; Disregard of Child Support Payments

AGENCY: Office of Child Support Enforcement (OCSE).

ACTION: Final rules.

SUMMARY: These final rules implement section 2640 of the Deficit Reduction Act of 1984 (DRA) which amends the Social Security Act to require that the first \$50 collected on a monthly support obligation be paid to the Aid to Families with Dependent Children (AFDC) family. This amount does not affect the family's AFDC eligibility or the amount of assistance to which they are entitled. In addition, this final rule revises current requirements which result in AFDC families not receiving the \$50 pass-through when support payments are made to a State IV-D agency or a legal entity of the State or political subdivision on time but are not received on time by the agency responsible for final distribution of the collection.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, (202) 245-1979.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 2640 of the DRA (Pub. L. 98-369) amended section 457(b) of the Social Security Act (the Act) to require States to pay the first \$50 of support collected on the monthly support obligation to the AFDC family. This statute also amended section 402(a)(8)(A) of the Act to require States to disregard "the first \$50 of any child support payments received in such month" when determining AFDC eligibility and the amount of the AFDC payment. The result of these changes is that AFDC families affected by this statute will have up to \$50 of additional disposable income each month.

Interim Final Regulatory Provisions

Interim final regulations published on September 10, 1984 (49 FR 35604) amended paragraphs (b)(1) and (b)(2) of 45 CFR 302.51 to conform Child Support

Enforcement program regulations with amended section 457(b) of the Act. The resultant distribution policy is that the first \$50 of a current support collection is paid to the AFDC family. If the current support collection is less than \$50, that amount is paid to the family.

These regulations apply to collections of current support only, not to collections of arrearages and provide that, if an AFDC family receives support from more than one absent parent, only the first \$50 of the total amount collected shall be paid to the family.

45 CFR 302.32(b) of current regulations requires the IV-D agency to inform the IV-A agency of the amount collected on the monthly support obligation as determined under § 302.51(a). State IV-D agencies and State IV-A agencies should consult on the best means of transmitting information on amounts collected and monthly support obligations to facilitate the payments by the IV-A agencies to AFDC families and the related disregard in determining AFDC eligibility and payments.

Related interim final regulations were published in the *Federal Register* (49 FR 35586) on September 10, 1984 by the Office of Family Assistance (OFA) to address AFDC program requirements concerning the \$50 disregard.

Changes in Response to Comments

In addition to changes made in response to comments, this final regulation includes a technical change to the fourth sentence in paragraph (b)(1) of § 302.51. The word "represents" is changed to "represent".

In response to comments from an advocacy group, this final regulation revises the definition of "date of collection" contained in paragraph (a) of § 302.51. This final regulation defines the "date of collection" as the date a payment is received by the IV-D agency or the legal entity of the State or political subdivision actually making the collection, whichever is earliest. It deletes the separate definition of date of collection in interstate cases and makes a conforming change to § 303.7(c)(7)(iv).

Response to Comments

We received eleven comments on the interim final regulation. Ten were from State and local government agencies and one was from an advocacy group. A discussion of these comments and our responses follows:

Comment: One State agency and two local jurisdictions requested clarification regarding whether incentives are paid on the \$50 payment made to the family under these regulations.

Response: The State is eligible for incentives on the \$50 payment to the family. Prior to enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378), only amounts collected which were used to reimburse assistance payments were eligible for incentive payments under section 458 of the Act. Section 5 of Pub. L. 98-378 amended section 458 of the Act effective October 1, 1985 to provide incentives on all AFDC and non-AFDC collections, regardless of whether they are retained by the State or paid to the family. Section 5 of Pub. L. 98-378 also amended section 458(a) of the Act through September 30, 1985 to provide incentives on the \$50 payment prior to the October 1, 1985 effective date of the expanded incentive payments system. Therefore, incentives will be paid on the \$50 payments beginning with the effective date of October 1, 1984 and will continue to be paid on such payments thereafter.

Comment: One State agency recommended that a \$50 increase in the AFDC payment standard for all AFDC recipients be substituted for the \$50 payment.

Response: These regulations merely implement the requirements in the amended statute. This recommendation cannot be implemented under current law.

Comment: One State commented that the October 1, 1984 effective date does not permit States to plan for program changes.

Response: The effective date is statutory and cannot be changed by regulation. The program changes required by these regulations should not be substantial, since both IV-A and IV-D agencies are already involved in distributing money to families and therefore have mechanisms in place for distribution.

Comment: Two State agencies asked if the \$50 disregard includes spousal support.

Response: The \$50 payment applies to both child and spousal support. This conforms to section 12 of Pub. L. 98-378 which requires State IV-D agencies to collect spousal support if a support obligation has been established with respect to the spouse and the IV-D agency is enforcing the child support order.

Comment: One State commented on the administrative difficulty of disregarding the \$50 payment for purposes of AFDC benefits while ensuring that this amount is considered in the computation of Food Stamp benefits.

Response: The statute mandates the disregard only for determining AFDC eligibility and the amount of the assistance payment. Under current statute, no comparable disregard applies to the computation of Food Stamp benefits.

Comment: One State and one advocacy group recommended that either the IV-D agency issue the \$50 payment to the family or States be given the flexibility to determine which agency makes the payment to the family.

Response: The IV-A agency already has a system for making assistance payments each month to individuals receiving AFDC. We believe the administrative burden will be less if the IV-A agency makes these \$50 payments as well. However, the regulations do not prohibit the IV-A agency from entering into an agreement with the IV-D agency to make the payments, as long as the IV-A agency retains overall responsibility for the payments.

Comment: One State agency recommended that no disregard be allowed on direct support payments retained in violation of 45 CFR 232.12(b)(4). (This section requires that support payments received by an AFDC applicant or recipient from an absent parent be paid to the IV-D agency.)

Response: Cooperation of an AFDC applicant or recipient in obtaining support is required under title IV-A of the Act and regulations at 45 CFR 232.12. If an AFDC applicant or recipient refuses to cooperate without good cause as determined under 45 CFR 232.41, the IV-A agency must deny assistance to the caretaker relative and provide assistance to the eligible child(ren) in the form of a protective payment. However, if there is an AFDC payment made on behalf of a child, the first \$50 of current support must be paid to the family pursuant to section 457(b)(1) of the Act (regardless of whether it is received directly by the family). The amount of the assistance payment or the actions of the payee do not affect distribution of the support collection.

Comment: Two State agencies recommended that each household be paid \$50 from the support collection when the children for whom support is collected are living in different households.

Response: We agree with the commenters that, in the situation described above, each family should receive a \$50 payment as a result of a support collection. If the collection is insufficient, the amount collected should be prorated between the households.

Comment: One State agency recommended we add to § 302.51(b)(1)

that " * * * in no case shall the total amount paid and disregarded exceed \$50 per month per assistance unit." This would prevent duplicate payments when an AFDC family receives a direct payment from one absent parent and the IV-D agency makes a current support collection from another absent parent in the same month.

Response: We believe that this issue is adequately addressed in § 302.51(b)(1) which provides that only the first \$50 of the total amount collected for the family shall be paid to them. If a family receives a direct payment from one absent parent and the IV-D agency collects current support from another absent parent for the same month, the State would recover the direct payment in full if it has already paid \$50 to the family from the IV-D collection. If the State recovers all but \$50 from the direct payment, any other IV-D collections for that month would be distributed without making another \$50 payment. For this reason, we are not revising the language contained in the interim final regulations.

Comment: One advocacy group opposed limiting the \$50 payment to amounts paid from current support only.

Response: Section 457(b) of the Act as amended by section 2640 of the DRA refers to "amounts as are collected periodically which represent monthly support payments." We interpret this phrase to refer to current support payments only. This is consistent with our 1975-76 policy interpretation of a similar provision in the original law which established the Child Support Enforcement Program under title IV-D of the Act (Pub. L. 93-647). Under that provision, 40 percent of the first \$50 collected which represented partial or complete payment of the support obligation for the current month was passed through to the AFDC family. This policy interpretation encourages voluntary and timely compliance with support orders. Congress clearly intended the \$50 payment to serve the purpose of promoting cooperation of both absent parents and custodial parents. This purpose can be promoted only if incentives are tied to compliance with the support order when each payment is due.

After consideration of this comment and concern that \$50 payments should be made to AFDC families whenever a current support payment is received timely by a legally accountable public entity, this final rule revises the date of collection for distribution purposes. This regulation defines the date of collection for distribution purposes in all cases as the date on which payment is received by the IV-D agency or the legal entity of

the State or political subdivision actually making the collection, whichever is earliest. It deletes reference to the legal entity of the State or political subdivision "making the collection on behalf of the IV-D agency" to ensure that, when payments are received timely by entities other than the IV-D agency, regardless of whether or not the entity is under cooperative agreement with the IV-D agency, the date of collection is tied to the initial point of receipt.

This revision to the definition of the date of collection will reduce the possibility that payments made on time will be distributed as payments on arrearages because of delays in transmitting collections between legal entities of the State or between States. It also furthers the intended purpose of the statute, i.e., to encourage voluntary and timely compliance with support orders. We would like to stress that the legal entity of the State or political subdivision actually making the collection includes Clerks of the Court, whether or not under cooperative agreement with the IV-D agency, and the wage withholding agency, if it is not the IV-D agency.

We have deleted the separate definition of date of collection for interstate cases because that definition may result in distribution of current support paid timely as past-due support. Under that definition, even if an absent parent paid support timely in the responding State, the definition of date of collection for interstate cases allowed the initiating State to consider the date it received the collection as the collection date and to distribute the payment as an arrearage if a payment was not forwarded by the responding State timely or several payments were forwarded in one month. For example, if the responding State collected the July support obligation on July 28 and the initiating State received the payment on August 2, the payment was considered a current payment for August and the family received the \$50 pass-through for August. If the responding State then collected the August payment on August 10 and the initiating State received this payment on August 15, it was considered an arrearage payment for the July support obligation. No \$50 payment was made to the AFDC family for July even though the absent parent paid his support timely. Deleting this definition will ensure payment of \$50 to the AFDC family when support is paid timely and avoid possible inequities resulting from delays in forwarding payments by responding States in interstate cases.

OCSE published proposed regulations implementing the requirements of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378) in the *Federal Register* (49 FR 36780) on September 19, 1984. These regulations included a proposal to require the collection date for distribution purposes in interstate cases to be the date the payment is received by the IV-D agency of the State in which the collection is made and in wage withholding cases the date the employer withholds the wages. Comments from State IV-D agencies cited the high cost of reprogramming their automated systems to comply with such a change and the difficulty of tracking and monitoring payments when the responding State and the employer do not specify the date of collection. As a result of these comments, the proposed changes were not included in the final regulation published in the *Federal Register* on May 9, 1985 (50 FR 19634). However, since that time, problems with States distributing current support as past-due support and not paying \$50 to AFDC families because of the date of collection definition persist. We believe that the problem has grown to the point that this change is essential to ensure support collections are treated accurately for distribution. States have been aware of the potential for this change for over three years.

We did not tie the date of collection to the date the employer withholds wages because IV-D agencies cannot control employer pay practices, especially in interstate wage withholding cases. However, States should strictly enforce the requirement that employers must remit amounts withheld within 10 days of the date the absent parent is paid. States also have no way of verifying when an absent parent made a payment other than to track receipt by the IV-D agency (or its agent) or the legal entity of a State or political subdivision actually making the collection, whichever is earliest.

With respect to interstate cases, final regulations published February 22, 1988 in the *Federal Register* (53 FR 5246) require responding States to indicate when the payment was received by the initial point of receipt within the State IV-D agency when forwarding payments to the responding State (see 45 CFR 303.7(c)(7)(iv)). We are making a conforming change to that section to require responding States to notify initiating States of the initial point of receipt by the IV-D agency or local entity of the State or political subdivision actually making the collection, whichever is earliest. Therefore, initiating States will know

the date of collection in interstate cases, thereby removing one of the problems cited by States in response to the change when it was proposed in September of 1984.

Comment. One advocacy group requested clarification on the treatment of lump sum payments in cases where a delay occurs in sending a \$50 payment resulting in more than one payment going to a family in a later month.

Response: Lump sum payments resulting from the State's delay in forwarding \$50 pass-through payments will be disregarded as if they had been made in the months the support collections were received. If the State collects current support and does not make the \$50 payment that month, the IV-A agency will disregard the payment whenever it is made to the family. This is consistent with the intended purpose of the statute, which is to provide the obligor an incentive to make regular and timely payments so that his or her family will receive the \$50 pass-through for each month in which current support is paid.

Comment. Two State agencies requested clarification regarding whether the \$50 payment applies to court-ordered support only.

Response: The \$50 payment applies to any support which has been assigned to the State pursuant to section 402(a)(26) of the Act, and is distributed under section 457(b) of the Act, including voluntary support.

Comment. One State agency requested clarification regarding the effective date of the \$50 payment provision.

Response: The statute requires an effective date of October 1, 1984. Thus, States must make the first \$50 payment from current support collected for the month of October, 1984.

Paperwork Reduction Act

This regulation contains no information collection requirements which require Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (Pub. L. 96-511.)

Executive Order 12291

The Secretary has determined that this document does not meet any of the criteria for a major rule as described by Executive Order 12291. The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980. The administrative costs are

expected to be negligible (less than \$500,000) and the effect of additional disregards is expected to be less than \$7.5 million, of which \$3.7 million is the Federal share. Therefore this proposed regulation does not meet the threshold for an economic analysis under E.O. 12291.

List of Subjects in 45 CFR Part 302

Child Support, Grant programs/social programs, Penalties, Reporting and recording requirements, Unemployment compensation.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: February 19, 1988.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: May 10, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, 45 CFR Parts 302 and 303 are amended as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 302.51 is amended by republishing the introductory text and revising paragraphs (a) and (b)(1) as follows:

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a) For the purposes of distribution under this section, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. (The IV-D agency may round off the converted amount to whole dollar amounts for the purposes of distribution under this section, § 302.52 and § 303.52.) Effective June 9, 1988, the date of collection shall be the date on which the payment is received by the IV-D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. In any case in which collections are received

by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

(b) * * *

(1) Of any amount that is collected in a month which represents payment on the required support obligation for that month, the first \$50 of such amount shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section. If the amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first \$50 of the amount which represents the required support obligation for the month in which the support was collected. If amounts are collected for one family which represent support payments from two or more absent parents, only the first \$50 of the amount collected which represents the total required support obligation for the month in which the support was collected shall be paid to the family under this paragraph. No payment shall be made to a family under this paragraph for a month in which there is no child support collection.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 303.7(c)(7)(iv) is revised to read as follows:

§ 303.7 Provision of services in interstate IV-D cases.

* * * * *

(c) * * *
(7) * * *

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments to the location specified by the IV-D agency in the initiating State no later than 10 days after the collection is received by the responding State IV-D agency except with respect to certain Federal tax refund offset collections as specified in § 303.72(h)(5) of this part. The IV-D agency must include sufficient information to identify the case, indicate when the payment was received at the initial point of receipt by the IV-D agency or legal entity of the State or political subdivision actually making the collection, whichever is earlier, and include the responding State's identifying code as defined in the

Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Code issued by the General Services Administration.

* * * * *

[FR Doc. 88-12895 Filed 6-8-88; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-232; RM-5694 and RM-6066]

Radio Broadcasting Services; Bethalto and Collinsville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238A to Bethalto, Illinois, as a first FM service, at the request of Bethalto Broadcasting. Additionally, a counterproposal filed by Bethalto Broadcasting proposing to allot Channel 238A to Collinsville, Illinois, instead, is dismissed at the petitioner's request. With this action, this proceeding is terminated.

DATES: Effective July 11, 1988; The window period for filing applications on Channel 238A at Bethalto will open on July 12, 1988, and close on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-232, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), is amended by adding the entry Bethalto, Channel 238A to Illinois.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-12676 Filed 6-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-588; RM-6107]

Radio Broadcasting Services; University Park, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of State College Communications Corp., substitutes Channel 246A for Channel 244A at State College, Pennsylvania, and modifies its license for Station WQWK(FM) to specify the newly allotted channel. Channel 246A can be allotted to University Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) west which will accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 40-48-32 and West Longitude 77-56-38. Canadian concurrence has been received since University Park is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 11, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-588, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for University Park, Pennsylvania, is amended by removing Channel 244A and adding Channel 246A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-12675 Filed 6-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-535; RM-5806]

Radio Broadcasting Services; Atlantic, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Nishna Valley Broadcasting Co., Inc. (formerly Valley Broadcasting, Inc.), substitutes Channel 279C for Channel 279C1 at Atlantic, Iowa, and modifies the license of Station KJAN-FM to specify the higher powered channel. Channel 279C can be allocated to Atlantic in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Station KJAN-FM's construction permit. The coordinates for this allotment are North Latitude 41-23-53 and West Longitude 95-28-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-535, adopted April 7, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Atlantic, Iowa is amended to remove Channel 279C1 and add Channel 279C.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-10838 Filed 6-8-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY**Office of the Secretary****48 CFR Part 970****Acquisition Regulation**

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Energy Acquisition Regulation (DEAR) and implements the requirements of section 1534(a)(2) of the Department of Defense (DOD) Authorization Act, 1986 (Pub. L. 99-145, November 8, 1985), as amended by Section 3131 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100-180, December 4, 1987) and section 305(a) of the Act titled "Making Further Continuing Appropriations For the Fiscal Year Ending September 30, 1988" (Pub. L. 100-202, December 22, 1987). The proposed DEAR amendments apply to all Department of Energy (hereinafter "DOE" or "the Department") management and operating (M&O) contractors, including DOE's national laboratories. These regulations are intended to provide the following clarification: under M&O contracts, the costs of self-initiated contractor legislative liaison activities to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are unallowable lobbying costs. The cost however, of providing information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to contract performance or proposed legislation in response to a request from Members of Congress or State legislatures, and their staff

members, continues to be an allowable contract cost, irrespective of whether such information or advice was requested or supplied through the DOE.

EFFECTIVE DATE: The requirements of this amended regulation are effective, retroactively, as of January 14, 1987.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy Division (MA-422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586-8175. Edward Weber, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Washington, DC 20585, (202) 586-1526.

SUPPLEMENTARY INFORMATION:**I. Background****II. Procedural Requirements**

- A. Review Under Executive Order 12291
- B. Review Under the Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. National Environmental Policy Act
- E. Public Hearing
- III. Public Comments

I. Background

Section 1534(a)(2) of Pub. L. 99-145 provided that costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are not allowable contract costs. The DOE's original implementation of this statutory cost prohibition on contractor lobbying activities involved two steps.

Prior to enactment of section 1534(a)(2), the contract clauses at DEAR 970.5204-13, Allowable costs and fixed-fee (CPFF management & operating contracts), and 970.5204-14, Allowable costs and fixed-fee (support contracts), specified that lobbying costs were unallowable. A decision was made that the existing lobbying cost prohibition found at DEAR 970.5204-13(a)(31) and 970.5204-14(e)(29) would be retained as written. Hence, the referenced-contract clauses required to be included in M&O contracts were not amended.

The DOE determined, however, that the existing cost principle criteria (DEAR 970.3102-7, Lobbying costs, effective 4-1-84) used by Contracting Officers for determining allowability of M&O contractor legislative liaison costs required amendment for consistency with congressional intent. In the applicable conference reports, Congress directed that DOE's regulations be consistent, to the maximum extent practicable, with the regulations promulgated by the Secretary of Defense, e.g., S. Rep. No. 118, 99th Congress, 1st Session, 515 (1985). Accordingly, DOE promulgated a

completely revised set of lobbying cost principles predicated primarily upon the regulations applicable to DOD contracts contained at Federal Acquisition Regulation (FAR) 31.205-22, Legislative lobbying costs, with certain DOE modifications, as a proposed rule in the Federal Register (51 FR 7471, Mar. 4, 1986).

In response to the ensuing public comments and Congressional correspondence, the Department substantially revised the proposed lobbying cost principle criteria, as explained in the final rule published in the Federal Register (52 FR 1603, Jan. 14, 1987). As then amended, the Department's cost principles governing M&O contractor lobbying costs generally provided that the cost of monitoring legislative proceedings and the cost of responding to Congressional requests for information were allowable, but the cost of activities intended to influence legislation were unallowable. Based on Senate recommendations, the proposed cost principle was revised to contain provisos specifying: (1) The cost of providing requested information to Congress or State legislatures would be allowable if the contractor concurrently provided the DOE with the information supplied to Congress; and (2) requests requiring contractor travel were to be processed through the DOE.

Pursuant to the Conference Report (H. Rep. No. 446, 100th Congress, 1st Session, 941 (1987) applicable to section 3131 of Pub. L. 100-180) and section 305(a) of Pub. L. 100-202, the DOE was directed to delete these cost provisos from its implementing regulation. A brief description of the DEAR amendments being promulgated today follows:

Under DEAR Subpart 970.31 *et seq.*, entitled "Contract Costs Principles and Procedures," DOE's cost principle criteria, policies and procedures previously specified in DEAR subsection 970.3102-7, are now incorporated in a new contract clause entitled "Legislative Lobbying Cost Prohibition" at DEAR 970.5204-17, as further described below. As amended, DEAR subsection 970.3102-7 contains guidance on the use of the new clause. Also, DEAR section 970.3103, Contract clauses, has been amended to prescribe mandatory use of the new clause in all M&O contracts.

Under DEAR Subpart 970.52, entitled "Contract Clauses for Management and Operating Contracts," subsections 970.5204-13 and 970.5204-14 are amended to incorporate particular language clarifications and additions necessary to implement the cost prohibitions at section 1534(a)(2) of Pub. L. 99-145, as amended by section 3131 of

Pub. L. 100-180 and section 305(a) of Pub. L. 100-202.

Also, DEAR subsection 970.5204-17, Legislative lobbying cost prohibition, is added as a new contract clause. It incorporates the cost principle criteria previously contained in subsection 970.3102-7, as amended for consistency with sections 3131 and 305(a) of Pub. L. 100-180 and 100-202, respectively. DOE's intent is to incorporate the definitive cost principle criteria applicable to legislative liaison activities being promulgated today into all DOE M&O contract awards or modifications as if that criteria had been included in the regulations promulgated on January 14, 1987.

II. Procedural Requirements

A. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. DOE submitted the rule to the Office of Management and Budget (OMB) for review. The OMB concluded its review.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354. The Act requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection and record keeping requirements are imposed by this rule.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020). Consequently, neither an environmental impact statement nor an environmental assessment pursuant to NEPA are required.

E. Public Hearing

The Department has concluded that this rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, the Department did not plan to hold a public hearing on this rule.

III. Public Comments

This final rule is based on the Notice of Proposed Rulemaking (NPR) published by DOE in the Federal Register on Mar. 7, 1988 (53 FR 7318) and pursuant to which public comments were invited for the 30-day period ending April 6, 1988. Public comments were received from three universities. The public comments and suggestions to the NPR, and a description of DOE action taken in response thereto, are summarized in the paragraphs that follow:

Comment: One commenter questioned the propriety of application of the proposed rule to all M&O contracts as opposed to "covered contracts" as defined in section 1534 of Pub. L. 99-145.

Response: In the Department's original implementation of section 1534 cost prohibitions, the issue of applicability was discussed at length in the DOE final rule under the subject heading "Comments Regarding Applicability of Section 1534" (52 FR 1603, Jan. 14, 1987). At that time, the DOE determined that the statutory cost prohibitions were generally unallowable under longstanding Departmental regulatory provisions for M&O contracts. It was decided that separate cost principle criteria for "covered" and "non-covered" contracts would not be established. The numerous reasons cited in support of DOE's decision at that time remain valid. Accordingly, no changes have been made to the proposed rule based upon this comment.

Comment: One commenter submitted three concerns. Those concerns have been summarized by DOE. Each of the

summarized concerns, followed by DOE's response, are published below.

(1) *Comment on DEAR subsection 970.3102-7*: Rather than just make a cross-reference in subsection 970.3102-7 to the new contract clause at subsection 970.5204-17, it is requested that a presentation of cost principles and guidance on the use of the prescribed contract clause would be useful and instructive.

Response: Proposed DEAR subsection 970.3102-7 has been revised to provide guidance on the use of the new clause. As amended, this subsection now specifies that the applicable cost principle criteria are contained in the new contract clause at subsection 970.5204-17 and changes to such cost principle criteria constitute a deviation within the meaning of subsection 970.3100-3. In addition, an explicit requirement to incorporate the new contract clause in all M&O contracts was established at DEAR subsection 970.3103.

(2) *Comment on DEAR subsection 970.5204-17*: The new contract clause entitled "Legislative Lobbying Cost" has been partially revised and is unnecessarily complicated as a consequence of previous partial revisions that were made at least twice in recent years. Also, paragraphs (a)(3) and (b)(1) could be combined. The commenter believed the entire clause should be rewritten.

Response: The DOE published an original set of cost principle criteria on January 14, 1987, as previously discussed in this final rulemaking. The only significant change promulgated today is the deletion of the two cost principle provisos found by Congress to be objectionable. The DOE does not share the commenter's view that paragraphs (a)(3) and (b)(1) should be combined into one statement. The cost prohibitions contained in paragraph (a)(3) apply to the cost of contractor initiated legislative liaison activities which are knowingly conducted for purposes of influencing legislation (lobbying). Paragraph (b)(1) applies to requests for information initiated by Members of Congress or State legislatures and allowability of resultant contractor costs incurred when responding to such requests. No changes were made to the proposed rule based upon this comment.

(3) *Comment on DEAR subsection 970.5204-17(f)*: The commenter objected to proposed paragraph (f) by alleging that certain allowable activities specified in paragraph (b), when taken together with the requirements of paragraph (f) for keeping time logs of employee lobbying activity, could be

interpreted to constitute unallowable lobbying activities. The commenter recommended that paragraph (f) be eliminated or modified to clarify that certain activities specified in (b) would not be considered "lobbying."

Response: In the opinion of the DOE the commenter has taken an unnecessarily narrow interpretation of the proposed language. The intent of proposed paragraph (f) was to specify that the contractor need not create additional records to support the allowability of claimed costs beyond those records normally required when employee legislative liaison activities constitute 25 percent or less of an employee's compensated time during a calendar month. To avoid potential misinterpretations, however, the word "lobbying" has been replaced with the words "legislative liaison activities" and the word "defined" has been replaced with the word "delineated."

Comment: One commenter, a university, stated that it:

"... * * * applauds the clarification that the costs of providing information in response to requests from Congress or State legislatures continue to be allowable and are distinctly different from lobbying costs which are unallowable."

Further, we believe the stipulation that time logs, calendars or similar records need not be created for the purpose of providing evidence of compliance with this regulation makes eminent good sense. The implementation of the regulation should save future unproductive bickering over cost disallowances."

Response: The DOE objective sought to be achieved by incorporating the new contract clause at DEAR subsection 970.5204-17 in M&O contracts is the reduction of potential disagreements. The commenter is cautioned, however, that where an employee's legislative liaison activities represent more than 25 percent of the employee's compensated time during a calendar month, time logs or other records, in addition to those normally maintained to support allowable costs, would be required to support the allowability of claimed costs associated with legislative liaison activities.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons outlined in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on June 1, 1988.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for DEAR Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99-145 (42 U.S.C. 7256a), as amended.

2. Section 970.3102-7 is revised to read as follows:

970.3102-7 Legislative lobbying costs.

Contractor costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are not allowable contract costs and shall not be reimbursed by DOE. This statutory based cost prohibition (See 42 U.S.C. 7256a, as amended) is specified in the applicable cost principles clauses at 970.5204-13(e)(31) or 970.5204-14(e)(29). Definitive cost principle criteria for determining the types of legislative liaison activity costs which are not reimbursable under M&O contracts are set forth in the contract clause at 970.5204-17. The referenced clauses are effective, retroactively, as of January 14, 1987, and any change made to the cost principle criteria specified therein constitutes a deviation requiring Procurement Executive approval pursuant to 970.3100-3.

3. Section 970.3103 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) as follows:

970.3103 Contract clauses.

(a) * * *

(b) The legislative lobbying cost prohibition clause at 970.5204-17 shall be included in all M&O contracts.

4. In section 970.5204-13, the section heading, the title to the clause, and subparagraph (e)(31), are revised to read as follows:

970.5204-13 Allowable costs and fixed-fee (Management and Operating contracts).

Allowable Costs and Fixed-Fee (Management and Operating Contracts) (June 1988)

(e) * * *

(31) Cost incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State

legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

5. In section 970.5204-14, the clause is amended by revising the title and subparagraph (e)(29), to read as follows:

970.5204-14 Allowable costs and fixed-fee (support contracts).

Allowable Costs and Fixed-Fee (Support Contracts) (June 1988)

(e) * * *

(29) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

6. Section 970.5204-17 is added to read as follows:

970.5204-17 Legislative lobbying cost prohibition.

Legislative Lobbying Cost Prohibition (June 1988).

(a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.

(b) Costs of the following activities are expected from the coverage of (a) above; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:

(1) Providing Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous, including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) from Members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. Reasonable costs for transportation, lodging, or meals incurred by contractor employees for the purpose of providing such information or advice shall also be reimbursable; provided such costs also comply with the allowable cost provisions of the contract.

(2) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract if authorized by the Contracting Officer.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.

(d) The contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the contractor's certification that the requirements and standards of this clause have been complied with.

(e) The contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.

(f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) an employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this paragraph are met, the contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f)(1) and (2) of this paragraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of

legislative liaison activity time spent by employees during any calendar month.

(g) During contract performance, the contractor should resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning compliance with this clause.

[FR Doc. 88-13009 Filed 6-8-88; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80333-8033]

Groundfish of the Gulf of Alaska

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

ACTION: Emergency interim rule, extension of effective date.

SUMMARY: An emergency interim rule redefining directed fishing for sablefish in the sablefish hook-and-line fishery in the exclusive economic zone (EEZ) in the Gulf of Alaska is in effect until June 7, 1988. The Secretary of Commerce extends the emergency interim rule for an additional 90 days (through September 5, 1988). This regulation is necessary to preclude targeting on sablefish in areas where only incidental catch of sablefish is allowed. This measure is intended to assure that an orderly sablefish fishery is carried out consistent with the allocation objectives of the North Pacific Fishery Management Council.

EFFECTIVE DATE: This rule is effective from 0001 hours, Alaska Daylight Time, June 7, 1988 through 2400 hours Alaska Daylight Time, September 5, 1988.

ADDRESS: Copies of the environmental assessment may be obtained from James W. Brooks, Acting Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: Under section 305(e)(2)(B) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule redefining directed fishing for sablefish in the hook-and-line fishery in the Gulf of Alaska (53 FR 7938, March 11, 1988; corrected at 53 FR 9772, March 25, 1988). That rule was effective for 90 days, from March 9 until June 7, 1988. The Secretary extends the emergency interim rule for an additional 90 days under section

305(e)(3)(B) of the Magnuson Act because conditions justifying the emergency action remain unchanged. The 90-day extension will preclude targeting sablefish in areas where the directed fishery has closed. Further information is contained in the preamble to the published emergency rule.

The North Pacific Fishery Management Council (Council) reviewed the results of the emergency rule at its April 13-15, 1988, meeting and also a draft regulatory amendment that will implement the same measure as contained in the emergency rule. The Council has agreed to the extension.

All provisions of the emergency interim rule remain in effect through September 5, 1988.

This extension of the emergency

interim rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of that order. This action is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that Order.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: June 6, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the

preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.2 [Amended]

2. In § 672.2, in the temporary definition of *Directed fishing* * * * 1988, the date "March 9, 1988" is revised to read "June 7, 1988" and the date "to June 7, 1988" is revised to read "through September 5, 1988."

[FR Doc. 88-12964 Filed 6-6-88; 2:22 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 111

Thursday, June 9, 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

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket Nos. AO-245-A9 & AO-250-A7]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Secretary's Decision on Proposed Amendment of Marketing Orders 907 and 908, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision recommends further amendment of Marketing Order Nos. 907 [7 CFR Part 907] and 908 [7 CFR Part 908] and directs that referenda be conducted to determine if navel and Valencia orange producers, under their respective marketing orders, favor the various amendment proposals. The proposed amendments would change the provisions of the marketing orders concerning the structure of the Navel and Valencia Orange Administrative Committees (committees). These committees are established under their respective marketing orders for the purpose of administering the programs. The amendment proposals include an alteration in committee size and composition, a limitation on tenure for members of the Valencia Orange Administrative Committee, a change in the basis for industry representation on the committees, the inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of oranges disposed of in all outlets in the determination of nominating rights, and conforming changes. The proposed changes are expected to provide a more flexible framework for apportioning committee membership among segments of the industries based upon their relevant dominance in the respective industries.

DATE: The referenda period for the purposes of determining if navel and Valencia orange producers under their respective marketing orders, favor the various amendment proposals will be held from June 21 through July 8, 1988. The representative periods for purposes of the referenda herein ordered are November 1, 1987, through June 1, 1988, for navel oranges and February 1, 1987, through January 31, 1988, for Valencia oranges.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued June 4, 1986, and published in the June 6, 1986, issue of the *Federal Register* [51 FR 20664]. The Recommended Decision was issued June 1, 1987, and published in the June 8, 1987, issue of the *Federal Register* [52 FR 21546].

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

These proposed amendments to the order were formulated on the record of a public hearing held June 10-12, 1986, at Visalia, California to consider the proposed further amendments of Marketing Order No. 907 [7 CFR Part 907] regulating the handling of navel oranges grown in Arizona and designated part of California and Marketing Order No. 908 [7 CFR Part 908] regulating the handling of Valencia oranges grown in Arizona and designated part of California, hereinafter referred to collectively as the "orders." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674 *et seq.*], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders [7 CFR Part 900]. The Notice of Hearing contained amendment proposals submitted by: The Sequoia Orange Company, Inc.; R. E. Herrick of Belridge

Farms and Packing Company; the Navel and Valencia Orange Administrative Committees established under the orders, hereinafter referred to collectively as the "committees," and the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA). The proposal pertained to committee size and composition, a limitation on tenure for members of the Valencia Orange Administrative Committee, changing the basis for industry representation on the committees, inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of all oranges in all outlets in determining nominating rights, and conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on June 1, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by July 8, 1987. Eleven exceptions were received. Those from the committees' attorney James E. Andrews (NOAC/VOAC); the committees' manager Billy J. Peightal (Peightal); William K. Quarles, Jr., Vice President, Government Affairs, Sunkist Growers, Inc. (Sunkist); Doris S. Freedman, Director of Regulatory Affairs, U.S. Small Business Administration (SBA); Robert E. Herrick, Vice President, Belridge Packing Co. (Belridge); Fred P. LoBue, Jr., LoBue Bros. (LoBue); and Perry L. Walker of Riverbend Farms, Inc. (Riverbend) were received within the comment period. The exceptions from James A. Moody, counsel for Sequoia Orange Company, Inc. (Sequoia), and Richard J. Pescosolido, Foothill Farms (Foothill), were received late but were considered. All exceptions were opposed to one or more aspects of the Recommended Decision and are discussed in detail later in this document.

The Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*]. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of

the proposed rule on small businesses for the purpose of the RFA.

The Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O.'s 907 and 908 are predominately small businesses, the orders themselves are tailored to the size and nature of these small businesses.

It is estimated that approximately 125 handlers of California-Arizona navel oranges are regulated under Marketing Order No. 907 and approximately 115 handlers of California-Arizona Valencia oranges are regulated under Marketing Order No. 908. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the RFA, an agricultural service firm with average annual receipts not exceeding \$3,500,000), almost all of the handlers of navel and Valencia oranges would fall within that definition. In addition, there are about 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than \$500,000. The majority of California-Arizona navel and Valencia orange handlers and producers may be classified as small entities.

The proposed amendments to the orders include provisions which could give additional orange industry organizations representation on the committees. The first material issue proposes to authorize, but not mandate, an increase in the size of the committees from 11 up to 13 members.

In separate material issue, for the Valencia orange industry, it is proposed to limit the number of consecutive terms of office which members of the Valencia Orange Administrative Committee may serve to three two-year terms. (Tenure is already limited to three two-year terms. (Tenure is already limited to three two-year terms for members of the Navel Orange Administrative Committee.)

The third material issue concerns changes in the basis for industry representation on the committees. This material issue contains several interconnected, proposed amendments which are discussed below.

Three main nominating entities are proposed with the first being the "cooperative marketing organization," or at the option organization, the growers affiliated with that organization, which disposed of the largest percentage of the total volume of navel and Valencia oranges disposed of by all handlers in all outlets during the fiscal (navel oranges) or marketing

(Valencia oranges) year during which nominations are made. This differs from current order provisions in that this nominating entity represents the cooperative marketing organization with the largest percentage of total dispositions rather than 50 percent of the total volume of oranges handled. By removing the "in excess of 50 percent" requirement, the proposed provision eliminates the present problem of there being no mechanism whereby the largest cooperative marketing organization may nominate individuals to serve on the committees if it handles less than 50 percent of the total volume of all oranges handled. The term "cooperative marketing organization" best describes the dominant marketing organization and the exception from the NOAC/VOAC, which is discussed later in the text, supports the use of this term.

The second type of nominating entity under this proposal would be individual handlers and groups of handlers who declare themselves to be nominating entities. Handlers not affiliated with the largest cooperative marketing organization would be able to combine with any other handler or handlers for the purpose of forming nominating entities. This would give handlers flexibility to maximize their opportunities for representation on the committees.

The third type of nominating entity would be comprised of growers who are not affiliated with the largest cooperative marketing organization or with any of the declared individual handlers or declared groups of handlers.

The formation of three nominating entities—the largest cooperative marketing organization; declared handlers or groups of handlers not affiliated with the above; and growers not affiliated with the above—would provide a more flexible framework for apportioning committee membership.

The proposed change that the first, third, fourth, and in the case of 13-member committees, sixth positions nominated by a nominating group are growers and the second and fifth positions are handlers would provide that at least half of the members of each committee are grower members.

The proposed change that nominating rights be determined on the basis of the current fiscal (navel oranges) or marketing (Valencia oranges) year in which nominations are made would provide the most up-to-date information for determining such rights. However, a cut-off date for current-year dispositions, determined by the Secretary, will need to be established because, in some years, it may be necessary to begin the nomination

process before all shipments had been made.

The proposed change that a simple majority would be considered as constituting a quorum and any action of a committee would require six concurring votes for an 11-member committee and seven concurring votes for a 12- or 13-member committee would be sufficient to reflect industry sentiment on all issues.

The proposed change to allow declared individual handlers and declared groups of handlers to develop slates of candidates for their grower and handler members on the committees with grower nominations by mail balloting would encourage handler interest in the orders.

The proposed change to allow growers affiliated with an independent handler entity, or an entity comprised of cooperatives and independent members, to nominate members to the committees through mail balloting would allow growers more opportunity to participate in the nominations of both grower and handler members.

The proposed change to allow a grower to participate as a part of only one nominating entity regardless of the number of handlers to whom such grower delivered oranges would continue to allow each grower to have an equal vote in elections. Growers would be free to choose the slate of candidates they feel would best represent their interests.

The fourth material issue which proposes including a definition of Capper-Volstead cooperative in the orders would identify entities eligible to nominate members through action of their boards of directors.

The fifth material issue which proposes that the volume basis for determining nominating rights would be the total volume of oranges "disposed of in all outlets" would be in line with the tree crop basis which is used for determining prorated bases and allotments.

To the extent that these proposals give industry organizations increased representation in the nominating process and on the committees, these organizations could incur some costs. Such costs would include additional time that might be spent by the handler groups and growers in nominating members to the committees and by new committee members in completing qualification statements and acceptance letters as required by the USDA. Another cost would be the time required to attend committee meetings and to conduct other committee business to the extent that these costs might not be fully

reimbursable by the committees. However, these costs are not expected to be significant and would be offset by the benefits of the new procedures. Under the current order, nomination groups are rigidly fixed, and the largest cooperative marketing organization which handled more than 50 percent of the total volume of oranges handled is represented by five members. The proposed procedures would recognize the changing structure of the orange industry and allow handlers and growers to form groups with those of similar interests. In addition, the additional flexibility to increase the committee size would allow more representation for handlers and growers on the committees.

Determination of Material Issues

In the Recommended Decision, only one material issue was presented. That issue included amendment proposals concerning committee size and composition, eligibility to nominate, the number of concurring votes required to carry motions, limitation of tenure for members of the VOAC, and conforming changes. Exceptions to this format were received from Peightal and LoBue. Foothill and Belridge support voting on the amendments as one issue, while Riverbend, Sequoia, Sunkist, and the SBA had no specific comments. Peightal stated that in a joint meeting on June 23, 1987, the committees voted to request the Secretary to divide the proposed amendments into four material issues, believing that growers would be better able to differentiate between those issues which they support and those issues which they do not support if the issues were divided. The four material issues suggested were: (1) Committee size; (2) tenure; (3) nomination procedures; and (4) adding the term "Capper-Volstead cooperative." Peightal stated that the committees secured broad industry support for the amendment they proposed at the June 1986 hearing. The Recommended Decision modified those proposals, and Peightal stated that the committees no longer have a basis to conclude that there is the support that previously existed. LoBue recommended that growers be allowed to vote on three separate issues: (1) Committee size; (2) nominating procedures; and (3) tenure for VOAC members.

Based on the comments received, the decision was made to divide the proposals into the following votable issues: (1) Authorizing up to 13-member committees; (2) limiting tenure for VOAC members; (3) changing the basis of industry representation on the committees; (4) including a definition of

Capper-Volstead cooperative in the orders; and (5) changing the volume basis for nominations.

Findings and Conclusions

The material issues of record are as follows:

- (1) Amend the orders to authorize increasing committee size up to 13 members.
- (2) Amend the Valencia Orange Marketing Order to limit consecutive terms of office to three two-year terms for Valencia Orange Administrative Committee members.
- (3) Amend the orders to change the basis of industry representation on the committees by establishing new nomination procedures which include the establishment of three types of nominating entities.
- (4) Amend the orders to include a definition of Capper-Volstead cooperatives to identify entities eligible to nominate members through action of their boards of directors.
- (5) Amend the orders to determine nominating rights based on the total volume of oranges "disposed of in all outlets."

The material issues, findings and conclusions, rulings, general findings, and regulatory provisions of the Recommended Decision published in the *Federal Register* [52 FR 21546, June 8, 1987] are hereby incorporated herein and made a part hereof subject to the following clarifications, modifications, and discussion:

(1) Committee Size

There were several proposals at the hearing relative to committee size, ranging from 11 to 13 members. The Recommended Decision proposed an increase in committee size from 11 to 13 members. Thirteen-member committees could better reflect the diversity of the industry and yet provide a workable forum for the expression of views. Exceptions received from the NOAC/VOAC, Peightal, and LoBue were opposed to this increase. The NOAC/VOAC and Peightal disagreed with the findings in the Recommended Decision that the preponderance of testimony indicated there would be significant benefits derived from adding members to the committees and indicated that there was limited support for 13-member committees in the industry and that the proposal would not pass in referendum. LoBue stated that an increase in committee membership in unnecessary and burdensome, and it could be a problem for the industry to find a total of six additional regular and alternate committee members who are capable and willing to serve. Sequoia, Foothill,

and Riverbend submitted briefs also opposing the USDA position unless concurrent changes in nomination and/or voting requirements were made. Sunkist had no specific comments.

Based on the exceptions, an increase in committee size is unnecessary at this time. While enlarging the committees could increase the opportunity for representatives of more industry organizations to serve on the committees, an increase in the number of committee members should not be mandated. Therefore, the committees should remain at 11 members and the allocation process described in the Recommended Decision is modified to reflect 11-member committees. However, authority should be added to the orders to allow the committees to be increased in size through informal rulemaking to up to 13 members. Such increases could be made to address any future changes in the structure of the industries. The allocation process, in the case of a 12- or 13-member committee is discussed in material issue No. 3. Therefore, §§ 907.20 and 908.20 should be revised to allow the committees, with the approval of the Secretary, to increase up to 13, the total number of members on the committees.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions and denied.

(2) Tenure and Retroactive Tenure for VOAC Members

The Recommended Decision proposed limiting consecutive terms of office to three two-year terms for Valencia Orange Administrative Committee (VOAC) members, including the non-industry members, and making this retroactive to February 1, 1984. Current provisions of the order do not limit the number of two-year terms that members may serve. Limitation of tenure could promote increased industry participation and involvement in the administration of the Valencia orange marketing order. A similar tenure limitation was implemented in January 1985 for Navel Orange Administrative Committee (NOAC) members. Briefs filed by the NOAC/VOAC, Peightal, and LoBue were opposed to this change. They pointed out the Valencia growers rejected tenure limitation in an August 1984 referendum, and that implementation of a tenure limitation would result in a loss of experienced members. As to the retroactive feature, all were vigorously opposed to its adoption. Opponents claimed that this

would result in the VOAC losing all or most of its experienced members at one time, causing major disruptions in the continuity of the administration of the order. Sequoia and Foothill submitted briefs supporting the USDA position, while the SBA, Riverbend, Sunkist, and Belridge had no specific comments on this issue.

Regular turnover of members on the VOAC would provide for a beneficial input of new ideas and perspectives and promote increased industry participation and involvement in the administration of the Valencia orange marketing order. The proposed amendment to § 908.21 includes a provision for limiting the tenure of VOAC members, including the non-industry member, to three consecutive terms. It would serve no useful purpose to limit the tenure for alternates or additional alternates because such alternates serve only during the absence of a member or in the event of a member's death, removal, resignation, or disqualification. However, under this provision, grower member would be precluded from serving as handler members, and *vice versa*, to extend their eligibility to serve. Therefore, § 908.21 should be so amended.

However, in accordance with the exceptions, the proposed retroactive feature is dropped. Since all members will be nominated pursuant to new procedures, it would be appropriate to look upon the newly-formed VOAC as a completely new committee and to begin the six consecutive year limitation on all new members at the same time.

The Recommended Decision discussed procedures for the possibility that nominations could be conducted in the middle of the current terms. At the time of publication, NOAC members were in the middle of a term while VOAC members were ending their current term. However, the situation is now reversed. The current term of office for the NOAC ends September 30, 1988, while the current VOAC term of office ends January 31, 1990. Thus, nominations will be conducted for a new NOAC term of office and in the middle of the VOAC term of office. Therefore, the procedures outlined in the Recommended Decision are modified as follows: Nominations for the initial term of office for the NOAC will be for the next regularly scheduled term of office which begins October 1, 1988. The 1988-90 term of office under the proposed committee structure would be a full term for purposes of the tenure provision contained in § 907.21.

Since nominations will likely be conducted for the VOAC in the middle of a term, the initial nomination

procedure, as set out in this final decision, would create two short terms of office. It would not be appropriate to count both partial terms as full terms for the purposes of the tenure limitation provision nor would it be desirable to delay nominations pursuant to this proposed amendment until early 1990 when the next regular term would begin. Therefore, the partial term of office which exceeds 12 months would be considered a full term of office for the purposes of the tenure provision, and the partial term of office of less than 12 months would not be considered a full term for the purposes of the tenure provision. Thus, an individual serving the shorter of the two partial terms would not be penalized by losing one-third of that member's three-term eligibility simply because the committee was restructured.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

(3) Basis for Representation on the Committees

Several interconnected, proposed amendments are included in this material issue.

Central Marketing Organization

The Recommended Decision proposed three nominating entities, the first being the "central marketing organization" with the largest percentage of total dispositions rather than the "cooperative marketing organization" which handled more than 50 percent of the total volume of oranges handled. The NOAC/VOAC filed an exception to the use of the term "central marketing organization." They stated in their exception that the term "cooperative marketing organization" is well understood, thus the proposed change would create confusion. No other comments were received concerning this term.

Currently, the largest central marketing organization in the orange industries would qualify as nominating entity 1. It is well understood in the industries that that entity is referred to as the largest "cooperative marketing organization." The exception points out that confusion may exist between the terms "central marketing organization" and "cooperative marketing organization." Therefore, to avoid confusion and in recognition of current industry use, the first nominating entity will be referred to as the largest "cooperative marketing organization."

To the extent that these revisions agree with issues raised in the

exception, the comments have been adopted. Otherwise, for the reasons stated above, the exception is denied.

Nominating Entities

The Recommended Decision proposed three nominating entities: (1) The largest central marketing organization (which is now described as the largest cooperative marketing organization); (2) declared handlers or groups of handlers not affiliated with the above; and (3) growers not affiliated with either of the above. Exceptions to this proposal were received from Sequoia, Foothill, and LoBue. These exceptions stated that the proposal was cumbersome, unnecessary, and could violate antitrust laws. Sequoia pointed out that this procedure would require an extreme amount of time and effort to form handler groups and that all of the effort would be borne by the smaller handlers, as Sunkist Growers, Inc. and Central California Orange Growers Cooperative (CCOGC) already have defined entities. Foothill stated that this proposal allows entities which are protected under the Capper-Volstead Act to share market strategy and planning with entities that are not protected. LoBue disagreed with a perceived requirement that would force handlers whose growers belong to cooperatives which do not centrally market to participate in one nominating entity.

In response to the Sequoia comment, the second group of nominating entities would be comprised of handlers who first handle oranges. While it is true that the grouping of handlers for nomination purposes will call for an expenditure of time and effort on the part of handlers who choose to form nominating entities, the result of that expenditure would be increased representation on the committees for those handlers. This provision does not require handlers to participate in the formation of nominating entities. Thus, those handlers who find no benefit in such procedures may choose not to utilize them. Growers who deliver oranges to such handlers would then be able to seek committee representation under nomination group three (growers not affiliated with the major cooperative or a declared nominating entity).

In reference to the LoBue exception, handlers who market for cooperatives are not required to form nominating entities only with other such handlers. Handlers who market oranges for CCOGC, for example, would not be required to form a nominating entity only with other handlers who market oranges for CCOGC. In addition, marketers of fruit who are not first

handlers are not eligible to form nominating groups.

As to Foothill's comments, nominating groups are formed for nomination purposes only. The fact that such groups are formed does not authorize members of such groups to engage in activities that could violate antitrust laws.

For the reasons stated above, the exceptions are denied.

Grower-Member Formula

The Recommended Decision proposed that when the first and second categories of nominating entities made nominations, the first position nominated would be a grower position, the second a handler, the third a grower, and so forth. Such an apportionment would have provided that at least half of the committee members would be grower members. Sequoia and LoBue filed exceptions to this proposal.

Sequoia stated that the alternate allocation of grower and handler seats to each handler group could lead to six or more handlers on the committees.

LoBue stated that the proposed amendments could put the growers in a minority on their own administrative committees. While the proposal as contained in the Recommended Decision could have resulted in six handlers on a 13-member committee, there would have been no possible situation in which there were more than six handler members on a committee.

However, record evidence supports that it is desirable that growers be in the majority on the committees. Thus, a revised method of allocating grower/handler positions should be adopted. The first, third, fourth, and in the case of 13-member committees, sixth positions nominated by category 1 or 2 nominating entities would be filled by growers; the second and fifth positions would be filled by handlers. This change would result in growers having a majority on the committees except in the unlikely event that only nominating entity 2 groups are formed, each with the right to nominate even numbers of members. In that case, membership on the committees could be six grower members and six handler members. Proposed §§ 907.20(d)(1) and 908.20(d)(1) as contained in the Recommended Decision have been revised to reflect the changes described above.

For an 11-member committee, members will be allocated in a method similar to that described in the Recommended Decision. Each nominating entity would earn the right to nominate one member, one alternate member and one additional alternate member, for each 10.0 percent attributable to such entity of the total

volume of oranges disposed of by all handlers in all outlets during the current fiscal year (navels) or marketing year (Valencias) in which nominations are made. This method would apply when no entity in the largest cooperative marketing organization category, or the declared handlers or groups of declared handlers category has more than 50 percent of total dispositions.

When one of these entities has more than 50 percent of total dispositions, that entity would qualify for no more than five committee members and their alternates. The following formula would be used to determine the percentage of the remaining total volume of dispositions required of other entities to qualify to nominate a member:

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

This formula is necessary due to the five-member limitation. Under the method whereby a nominating entity earns the right to nominate one member for each 10.0 percent of total dispositions, such entity would reach the five-member limit at 50 percent of total dispositions. If such entity controls more than 50 percent of total dispositions, the amount such entity controls above 50 percent could not be used by that entity to earn further committee representation. In this case, rights to nominate the remaining five handler or grower members should be apportioned over the remaining volume of dispositions, which would equal less than 50 percent of total dispositions. The above formula would provide other entities with the right to nominate one member, one alternate member and one additional alternate member, for each one-fifth of the remaining volume of total dispositions controlled by such entities. For example, if the largest cooperative marketing organization (Group A) controls 58 percent of total dispositions, two declared handler groups (Groups B and C) control 24 and 7 percent of total dispositions, respectively, and the unaffiliated growers (Group D) control 11 percent of dispositions, the members would be allocated as follows: The number of seats which the largest cooperative marketing organization may nominate is limited to five. Because the largest cooperative marketing organization controls more than 50 percent of total dispositions, the percentage required to nominate each member, plus an

alternate member and additional alternate member for the remaining entities, is calculated as follows:

$$\frac{50\% - 8\%}{5} = 8.4\%$$

The following table shows member allocation to the four groups:

Groups	A	B	C	D	Totals
Percent controlled....	58	24	7	11	100% disposition.
Number of seats allocated based on 8.4% per seat.....	5	3	1	1	10

If the committees, with the approval of the Secretary, increase committee size to 12- or 13-member committees, then the percentage of total dispositions required by an entity to nominate one member, one alternate member, and one additional alternate member would be 9.09 percent and 8.33 percent, respectively, in the case of an entity in the largest cooperative marketing organization category, or the declared handlers or groups of declared handlers category having more than 50 percent of total dispositions, such entity would be limited to five members on a 12-member committee and 6 members on a 13-member committee. In either case, six member positions would remain to be allocated among other entities. In order to allocate the remaining six positions, the following formula would be used:

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

As in the example for an 11-member committee, this formula would provide the percentage of total dispositions required of an entity to qualify to nominate a member, alternate member and additional alternate member.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

Non-Industry Member

The Recommended Decision did not adopt the proposed changes in the

qualification and selection criteria for non-industry members. Exceptions were received from Sequoia, Foothill, and Riverbend. Sequoia stated that the position for a non-industry member should be abolished or made a "truly responsive public position." Sequoia further stated that, in its present state, the position serves no useful purpose and is harmful to the interests of the public at large and minority interests in the industry. Foothill stated that the non-industry member should not be selected by the committees but by the Secretary from nominees submitted by all interested groups except the committees. Riverbend stated that the non-industry member should represent consumer interests, and that each committee should submit to the Secretary one nominee who was selected unanimously. Then, if no unanimous selection is made, all nominees should be submitted to the Secretary for selection by the Secretary.

Non-industry members are persons who are not growers or handlers, or employees, agents, or representatives of a grower or handler, or of a central marketing organization, as is required by §§ 907.22(f) and 908.22(f) of the respective orders. The non-industry member provides an independent point of view in committee deliberations. The USDA carefully reviews and analyzes all nominees for non-industry member positions on all committees to ensure that their qualifications are in compliance with order requirements. In response to Riverbend's exception, the current procedure provides that the committees shall choose nominees for the non-industry member positions and allows (but does not require) the Secretary to either approve the individual nominees or to select from other qualified candidates. This procedure provides for committee input into the nomination process. The discretion to select appropriate members rests with the Secretary.

For the reasons stated above, the exceptions are denied.

Determination of Nomination Rights on the Current or Prior Fiscal (Navel Oranges) or Marketing (Valencia Oranges) Year

The Recommended Decision proposed that nominating rights be determined on the basis of the fiscal (navel oranges) or marketing (Valencia oranges) year prior to that in which nominations are made. Currently, the marketing orders prescribe that this calculation be made on the basis of the current fiscal (navel oranges) or marketing (Valencia oranges) year. In the case of both navel and Valencia oranges, it has often been

necessary to use the information on shipments for a partial year in order to ensure that nominations are made in time to select a new committee in a timely manner. The proposal sought to provide a sufficient period of time to conduct nominations after the percentages are computed on the basis of a full year and before the term of office begins. Exceptions to this proposal were received from the NOAC/VOAC, LoBue and Sequoia. These exceptions proposed using current year dispositions as this would give the most up-to-date information. The NOAC/VOAC and LoBue stated that the industry is and has always been in a continuous state of change and committee membership should reflect this in as timely a manner as possible.

The Recommended Decision did not provide for the use of current year dispositions for fear that the failure to utilize end-of-season shipments could alter entities' volume percentages. However, it has been determined that such end-of-season shipments are usually quite low in volume and their exclusion would not be expected to alter the relative percentages of dispositions between industry entities. Accordingly, this proposed rule provides for use of current year dispositions.

Because it may be necessary to begin the nomination process before all shipments have been made, a cut-off date for current year dispositions, determined by the Secretary, should be established. Using the most current information available would best reflect the changing structure of the industries and provide the most representative committees possible. After gaining experience in the revised nomination process, the committees may find that particular times each season would be most appropriate as the cut-off dates. Thus, the committees should be authorized, subject to the approval of the Secretary, to recommend such dates to be used each year for nomination purposes.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

Voting

The Recommended Decision proposed that seven votes (a simple majority) on a 13-member committee would be considered as constituting a quorum and that seven affirmative votes would be necessary to pass any committee motion. Riverbend and Belridge filed the only exceptions to this proposal.

Riverbend proposed that a "super-majority" of nine affirmative votes should be required to initiate prorate during a season. After ten weeks of regulation, a unanimous committee vote should be required to continue any existing prorate regulation. Belridge suggested that the committee members must be able to agree by more than a simple majority vote.

A "super-majority" requirement that up to three-fourths of the committee be required to pass a motion would enable a small portion of the industry to nullify the views of the majority. The current proposal ensures that no one entity will have a majority of seats on a committee. On an 11-member committee, no one entity would have more than five seats, and six votes are required to pass a motion. Therefore, the "super majority" requirement appears to be unnecessarily stringent, considering the nature of committee deliberations and voting history.

For the reasons stated above, these exceptions are denied.

While the proposal in the Recommended Decision was drafted in terms of a 13-member committee, this proposal would require a simple majority, regardless of committee size, to constitute a quorum. Thus, in the case of an 11-member committee, six members shall constitute a quorum and any committee action shall require at least six concurring votes and in the case of 12- or 13-member committees, seven members shall constitute a quorum and any committee action shall require at least seven concurring votes.

Selection of Grower and Handler Members

The Recommended Decision proposed that growers affiliated with an independent handler entity or an entity comprised of Capper-Volstead cooperatives and independent handlers should nominate grower members to the committees. The committees had proposed that handlers select slates of candidates for nomination. The Recommended Decision also proposed allowing declared individual handlers and declared groups of handlers (that is, individual or groups of handlers who declare themselves to be nominating entities), to nominate handler members without grower ratification. The NOAC/VOAC filed the only exception. They stated that the recommended nomination procedures would discourage the formation of handler coalitions since handlers would be excluded from participation in grower-member nominations, and growers would be excluded from participating in

handler-member nominations. In addition, the NOAC/VOAC stated that the procedure would be too time consuming and complex. The NOAC/VOAC comment advocates handler selection of grower and handler slates of candidates with grower approval in a ratification process.

In accordance with record evidence, growers should have more opportunity to participate in the nomination of both grower and handler members. In considering the exceptions of the NOAC/VOAC, it was determined that this nomination procedure should be amended to allow verifiable grower participation. Thus, handlers' coalitions should be allowed, with the input of the growers they represent, to develop slates of grower and handler candidates for nomination. Such slates would be developed by single nominating entities or handler coalitions comprising a nominating entity. After nominating entities are informed by the USDA of the number and type of members their entity would be authorized to nominate, the handlers involved would consult their growers and develop a slate of candidates for nomination containing, at a minimum, one eligible candidate for each member, alternate member, and additional alternate member for each position the coalition is allowed. The USDA would use the slate of candidates for nomination, developed by each nominating entity, for mail balloting among those growers who delivered their fruit to the handler or group of handlers which make up that nominating entity. Since the cooperative marketing organization which makes up nominating entity 1 may choose to allow their growers to vote directly rather than to nominate by vote of their board of directors, this procedure would also apply to a grower vote of nominating entity 1 growers. Thus, the Recommended Decision is modified to allow handlers in nominating entities 1 and 2 to develop slates of candidates for nomination with grower ratification by mail balloting conducted by the USDA. In addition, growers affiliated with such handlers would be able to nominate by writing in candidates' names on the mail ballots.

At the hearing, the NOAC/VOAC proposed a method whereby handlers would conduct mail balloting among their own growers and certify the results to the USDA. Using this method, however, the USDA would be unable to ascertain if all growers had been contacted and unable to review the results of the balloting. Therefore, mail balloting of growers should be conducted by the USDA. Such balloting

should also allow for write-in candidates. In the case of a nominating entity being a cooperative, the cooperative's board of directors should be allowed to decide on its nominees. In nominating entities made up of cooperatives and independents, mail balloting would be conducted among all growers affiliated with the nominating entity. Further authority should be included to allow the committees to recommend, subject to the approval of the Secretary, regulations to implement these nomination procedures.

To the extent that these revisions agree with issues raised in the exceptions, their comments have been adopted. Otherwise, for the reasons stated above, the exceptions are denied.

The USDA will conduct the initial committee nominations using interim procedures to be developed. Such procedures will include notifying handlers of their volume percentages and the percentages required to be allocated member positions; requesting the formation of handler coalitions; determining the number of members each nominating entity will receive and notifying each nominating entity of such number; requesting slates of candidates for nominations from nominating entities 1 and 2; holding candidate selection meetings for nominating entity 3 growers; mailing ballots to growers in nominating entities 1, 2, and 3; and tallying the results of such mail balloting.

Grower Participation In One Or More Nominating Entities

The Recommended Decision proposed that if a grower delivers fruit to more than one declared handler or group of handlers, the grower would vote for grower members to represent the nominating entity to which the grower delivered the greatest volume of fruit. Therefore, a grower could participate as a part of only one nominating entity regardless of the number of handlers to whom oranges were delivered. An exception to this proposal was filed by the NOAC/VOAC. Under the NOAC/VOAC's initial proposals, grower voting would be weighted within each handler entity based on each grower's percentage of all oranges handled by such handlers in such entity. Thus, a grower delivering oranges to more than one entity could have participated in the nominating process of each such entity on a weighted basis. The NOAC/VOAC stated that this is a better procedure than the Recommended Decision's proposal because it is far less difficult and costly to administer, and it would ensure that growers are not

"disenfranchised" with regard to part of their tonnage.

The NOAC/VOAC proposal could provide those growers with greater production a greater voice in the nominating process than those with less production. Under the orders, each grower has an equal vote in nominations. Weighting the votes of growers could subordinate the interests of smaller growers to those of larger growers in committee decisionmaking.

Growers should choose the nominating entity in which they desire to cast their vote if they deliver oranges to more than one such entity. Growers would be free to choose the slate of candidates they felt would best represent their interests. The USDA would ensure that growers vote for only one slate of candidates. The provision entitling each grower one vote as proposed in the Recommended Decision should remain unchanged.

For the reasons stated above, the exception is denied.

(4) Capper-Volstead Cooperatives

The Recommended Decision proposed that in the case of Capper-Volstead cooperatives which declare themselves as nominating entities, the cooperatives' boards of directors could nominate committee members. The NOAC/VOAC filed an exception to this proposal, stating that each Capper-Volstead cooperative is controlled by its own by-laws with regard to voting and that "there is no reason to force those handlers to act as a unit through a Board of Directors." As stated in the Recommended Decision, Capper-Volstead cooperatives which declare themselves to be nominating entities are not required to nominate committee members through their boards of directors. If they so choose, the cooperatives' boards of directors may authorize their growers to nominate directly. Handlers who market for cooperatives other than the largest cooperative marketing organization, are not required to form nominating entities only with other such handlers. For example, a handler who markets oranges for a cooperative would not be required to be in the same nominating entity as other handlers who market for that cooperative. The handler could join another nominating entity and that handler's growers would be part of the new nominating entity for the purposes of nominations.

For the reasons stated above, the exception is denied.

The definition of Capper-Volstead cooperatives should be made a part of the order. Currently, such a definition is

found in §§ 907.104(a)(1) and 908.104(a)(1) of the administrative rules and regulations of the navel and Valencia orange marketing orders, respectively. For purposes of clarifying the orders, the definition should be added to the order as contained in the Recommended Decision.

(5) Volume Basis for Determining Nominating Rights

The first nominating entity, the largest cooperative marketing organization, is also referred to as the organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the fiscal (naval oranges) or marketing (Valencia oranges) year prior to that in which nominations are made. This differs from current order provisions in that this nominating entity represents the cooperative marketing organization with the largest percentage of total dispositions rather than the cooperative marketing organization which handled more than 50 percent of the total volume of oranges handled, as currently provided in §§ 907.22(b) and 908.22(b) of the navel and Valencia orange marketing orders, respectively. The Recommended Decision proposed that the volume basis for determining nominating rights would be the total volume of oranges "disposed of in all outlets" rather than the volume of oranges "handled to fresh domestic channels, including Canada" as currently specified in the orders. Total dispositions to all outlets would include by-products, animal feed, charitable donations, and exports in addition to fresh domestic shipments. Exceptions to this proposal were filed by Sequoia, Riverbend, the SBA, and Belridge. No other comments on this proposal were received. Sequoia suggested that this proposal is contrary to law because it would allow voting rights for unregulated oranges and favors large entities, those in District 2 (with the capacity to export) and entities with juice plants. Sequoia stated that the Recommended Decision gives no justification for this radical departure from current practice. Riverbend felt that establishing nomination rights by total tree crop would skew committee representation away from growers who are most effected by prorate and towards growers who are least affected. The SBA suggested that the use of total dispositions as a basis for nominations would tend to favor the largest central marketing organization on the committees and that it would permit growers and handlers not subject to regulation to have a greater voice in

determining whether the committees would recommend the imposition of volume controls in the fresh domestic market. Belridge stated that by using total dispositions, unregulated oranges would determine who is regulated and how they are regulated. They also suggested that it would be unfair for districts with no regulation to participate in deciding the amount of regulation to be imposed on competing regulated districts.

The use of total dispositions in all outlets for all nominating entities would be in line with the tree crop basis which is used for determining prorate bases and allotments. Further, while exported fruit and fruit that is processed into juice or otherwise utilized is not regulated under the marketing orders, the market for such fruit and subsequent disposition of such fruit has an impact upon the fresh domestic market and committee deliberations on the need for and level of regulation. In addition, if only fresh domestic shipments are used in determining nominating rights, the rights of an individual nominating entity could be voided by an unusual event, such as a freeze, which could affect the suitability of fruit for the fresh market but not for other outlets.

Therefore, it has been determined that the use of total dispositions in all outlets would more accurately reflect each entity's proportion of the industry and impact on the industry in general. Further, this provision would increase the potential for each committee as a whole to reflect the industries as a whole. In order for the committees to make decisions for the benefit of the industries at large, it is necessary for the committees to have at their disposal in the decisionmaking process the experience and knowledge of the industries at large.

For the reasons stated above, the exceptions are therefore denied.

If this issue (use of total dispositions) fails in referendum, nominating rights would then be determined as currently defined in the orders, that is, on the basis of the total volume of oranges handled in fresh domestic channels, including Canada, during the fiscal (naval oranges) or marketing (Valencia oranges) year in which nominations are made.

Conforming Changes

A proposal in the notice of hearing by the USDA was that consideration be given to making such other changes in the orders as may be necessary to make the entire orders conform to any amendments that may result from this proceeding. This proposal was received at the hearing without opposition, and

such changes as are necessary will be incorporated into the orders.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the changes in the recordkeeping and reporting provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

Marketing Orders

Annexed hereto and made a part hereof are the documents entitled, respectively, "Order Amending the Order, As Amended, Regulating the Handling of Navel Oranges Grown in Arizona and Designated Part of California," and "Order Amending the Order, As Amended, Regulating the Handling of Valencia Oranges Grown in Arizona and Designated Part of California." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that referenda be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed orders, as amended and as hereby proposed to be amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, are approved or favored by producers, as defined under the terms of the orders, who during the representative period, were engaged in the production areas in the production of navel or Valencia oranges in the aforesaid production areas.

The representative periods are hereby determined to be November 1, 1987, through June 1, 1988, for navel oranges and February 1, 1987, through January 31, 1988, for Valencia oranges.

The agents of the Secretary to conduct such referenda are hereby designated to be Robert J. Curry and Kurt J. Kimmel, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1755 N. Gateway, Suite B, Fresno, California 93727; and Raymond C. Martin, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

List of Subjects in 7 CFR Parts 907 and 908

Arizona; California, Marketing orders and agreements; Navel, Oranges, and Valencia.

Proposed Order Amending the Order Regulating the Handling of Navel Oranges Grown in Arizona and Designated Part of California

Part 907 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], and the applicable rules of practice and procedure effective thereunder [7 CFR Part 900], a public hearing was held upon proposed amendments to Marketing Order No. 907 [7 CFR Part 907] regulating the handling of navel oranges grown in Arizona and designated part of California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said order, as amended and as hereby further amended, regulates the handling of navel oranges grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its

application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act;

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of navel oranges; and

(5) All handling of navel oranges grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date thereof, all handling of navel oranges grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

The provisions of the proposed marketing order, amending the order, contained in the Recommended Decision issued by the Administrator on June 1, 1987, and published in the **Federal Register** [52 FR 20664, June 8, 1987], shall be and are the terms and provisions of this order, amending the order, subject to changes in §§ 907.19, 907.20, 907.21, 907.22, 907.23, 907.24, 907.26, 907.27, 907.29, 907.30, and 907.104, and are set forth in full herein.

It is proposed to amend Part 907 as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. A new § 907.19 is added to read as follows:

§ 907.19 Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

3. Section 907.20 is revised to read as follows:

§ 907.20 Establishment and membership.

(a) There is hereby established a Navel Orange Administrative Committee which, as soon as nominations are made pursuant to § 907.22 and selections are made pursuant to § 907.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower

and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate member, or additional alternate member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) The committee may, with the approval of the Secretary, increase up to 12, the number of grower and handler members on the committee.

(c) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 907.22 and selections made pursuant to § 907.23.

4. Section 907.21 is revised to read as follows:

§ 907.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin October 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office.

5. Section 907.22 is revised to read as follows:

§ 907.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the

largest percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section, who declare themselves to be nominating entities, or the body of growers who deliver navel oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph:

Provided, That no handler may participate as a member of more than one nominating entity: *Provided further*, That if a handler coalition forms and

qualifies for a member position but no slate of candidates for nominations is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further*, That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or by the growers who deliver to the handler(s) comprising such entities:

Type of member to be nominated:	Type of business engaged in by declared handler:	Slates of candidates for nomination developed by:	Nominations made by
Grower/Handler.....	Capper-Volstead cooperative.....	Board of Directors.....	Board of Directors or growers at the option of the Board
Grower/Handler.....	Independent.....	Handlers.....	Growers.
Grower/Handler.....	Combination of Capper-Volstead cooperative and independent.	Handlers.....	Growers.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current fiscal year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member.)
00.00 to 9.99.....	0
10.00 to 19.99.....	1
20.00 to 29.99.....	2
30.00 to 39.99.....	3
40.00 to 49.99.....	4
50.00 to above.....	5

Provided, That should the number of grower and handler members of the

committee be increased to 11 or 12, pursuant to § 907.20 (b), the percentages required for nominating rights shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and in the case of a committee with 12 grower and handler members, the maximum number of members which may be nominated by any one nominating entity shall increase to six: *Provided further*, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table applicable to the other nominating entities shall change according to the following formulas: For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate;}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99.....	0
10.00 to 19.99.....	1

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
20.00 to 29.99.....	2
30.00 to 39.99.....	3
40.00 to 49.99.....	4
50.00 to 59.99.....	5
60.00 to 69.99.....	6
70.00 to 79.99.....	7
80.00 to 89.99.....	8
90.00 to 99.99.....	9
100.00.....	10

Provided, That should the number of grower and handler members of the committee be increased to 11 or 12, pursuant to § 907.20(b), the percentages required for nominating rights shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and the maximum number of members which may be nominated shall increase to 11 or 12, respectively: *Provided further*, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formulas: For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate;}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(e) If nominations for members positions pursuant to paragraphs (c) and (d) total less than 10 for a committee of 11 members pursuant to § 907.20(b), or less than 11 or 12 for a committee of 12 or 13 members, respectively, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus

alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided*, That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section: *Provided further*, That should the number of grower and handler

members of the committee be increased to 12, pursuant to § 907.20(b), no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of six members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section.

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower
2	1 grower, 1 handler
3	2 growers, 1 handler
4	3 growers, 1 handler
5	3 growers, 2 handler
6*	4 growers, 2 handler

* In the case of a committee with 12 grower and handler members.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided*, That growers may cast votes for candidates who do not appear on the ballots: *Provided further*, That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided*, That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

6. Section 907.23 is revised to read as follows:

§ 907.23 Selection.

From the nominations made pursuant to § 907.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member: *Provided*, That the Secretary shall select 11 or 12 members of the committee and an alternate an additional alternate for each member in the case of a 12- or 13-member committee, respectively, established pursuant to § 907.20(b). From the nominations made pursuant to § 907.22(h) or from other qualified

persons, the Secretary shall select one member of the committee and an alternate to such member.

7. Section 907.24 is revised to read as follows:

§ 907.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 907.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 907.22.

8. Section 907.26 is revised to read as follows:

§ 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

9. Section 907.27 is revised to read as follows:

§ 907.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member, and, in the absence of such alternate, the additional alternate shall so act: *Provided*, That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 907.29 [AMENDED]

10. Section 907.29 is amended by removing paragraph (n).

11. Section 907.30 is amended by revising the heading and paragraph (a) to read as follows:

§ 907.30 Voting procedures.

(a) A majority of the committee shall constitute a quorum, and any action of the committee shall require at least six concurring votes for an 11-member committee, and at least seven concurring votes for a 12- or 13-member committee established pursuant to § 907.20(b).

§ 907.104 [Removed]

12. Section 907.104 is removed.

Proposed Order Amending the Order Regulating the Handling of Valencia Oranges Grown in Arizona and Designated Part of California

Part 908 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], and the applicable rules of practice and procedure effective thereunder [7 CFR Part 900], a public hearing was held upon proposed amendment of Marketing Order No. 908 [7 CFR Part 908] regulating the handling of Valencia oranges grown in Arizona and designated part of California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said order, as amended and as hereby further amended, regulates the handling of Valencia oranges grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act;

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of Valencia oranges and;

(5) All handling of Valencia oranges grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date thereof, all handling of Valencia oranges grown in the production area shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

The provisions of the proposed marketing order, amending the order, contained in the Recommended Decision issued by the Administrator on June 1, 1987, and published in the **Federal Register** [52 FR 20664, June 8, 1987], shall be and are the terms and provisions of this order, amending the order, subject to changes in §§ 908.19(a), 908.20, 908.21, 908.22, 908.23, 908.24, 908.26, 908.27, 908.29, 908.30, and 908.104, and are set forth in full herein.

It is proposed to amend Part 908 as follows:

**PART 908—VALENCIA ORANGES
GROWN IN ARIZONA AND
DESIGNATED PART OF CALIFORNIA**

1. The authority citation for 7 CFR Part 908 continues to read as follows:

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

13. A new § 908.19a is added to read as follows:

§ 908.19a Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

14. Section 908.20 is revised to read as follows:

§ 908.20 Establishment and membership.

(a) There is hereby established a Valencia Orange Administrative

Committee which, as soon as nominations are made pursuant to § 908.22 and selections are made pursuant to § 908.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) The committee may, with the approval of the Secretary, increase up to 12, the number of grower and handler members on the committee.

(c) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 908.22 and selections made pursuant to § 908.23.

15. Section 908.21 is revised to read as follows:

§ 908.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including

alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office.

16. Section 908.22 is revised to read as follows:

§ 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section who declare themselves to be nominating entities, or the body of growers who deliver Valencia oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided*, That no handler may participate as a member of more than one nominating entity: *Provided further*, That if a handler coalition forms and qualifies for a member position but no slate of candidates for nomination is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further*, That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or the growers who deliver to the handler(s) comprising such entities:

Type of member nominated	Type of business engaged in by declared handler	Slate of candidates for nomination developed by—	Nominations made by—
Grower/handler.....	Capper-Volstead cooperative.....	Board of directors.....	Board of directors or growers at the option of the board.
Do.....	Independent.....	Handlers.....	Growers.
Do.....	Combination of Capper-Volstead cooperative and independent.	Do.....	Do.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current marketing year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made	Number of members which may be nominated (an alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99.....	0
10.00 to 19.99.....	1
20.00 to 29.99.....	2
30.00 to 39.99.....	3
40.00 to 49.99.....	4
50.00 and above.....	5

Provided, That should the number of grower and handler members of the

committee be increased to 11 to 12, pursuant to § 908.20(b), the percentages required for nominating rights, shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and, in the case of a committee with 12 grower and handler members, the maximum number of members which may be nominated by any one nominating entity shall increase to six: *Provided further*, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table for other nominating entities shall change according to the following formulas: For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate;}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made	Number of members which may be nominated (an alternate and an additional alternate shall be nominated for each member)
20.00 to 29.99.....	2
30.00 to 39.99.....	3
40.00 to 49.99.....	4
50.00 to 59.99.....	5
60.00 to 69.99.....	6
70.00 to 79.99.....	7
80.00 to 89.99.....	8
90.00 to 99.99.....	9
100.00.....	10
00.00 to 9.99.....	0
10.00 to 19.99.....	1

Provided, That should the number of grower and handler members of the committee be increased to 11 to 12, pursuant to § 908.20(b), the percentages required for nominating rights, shall decrease to increments of 9.09 percent or 8.33 percent, respectively, and the maximum number of members which may be nominated shall increase to 11 or 12, respectively: *Provided further*, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change to the following formulas: For a committee of 10 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

For a committee of 11 or 12 grower and handler members,

$$\frac{50\% - (\text{excess over } 50\%)}{6} = \text{Percentage required to nominate one member, one alternate, and one additional alternate.}$$

(e) If nominations for member positions pursuant to paragraphs (c) and (d) of this section total less than 10 for a committee of 11 members pursuant to § 907.20(b), or less than 11 or 12 for a committee of 12 or 13 members, respectively, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided*, That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section: *Provided further*, That should the number of grower and handler members of the committee be increased to 12, pursuant to § 908.20(b), no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of six members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section.

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	3 growers, 1 handler.
5	3 growers, 2 handlers.
*6	4 growers, 2 handlers.

*In the case of a committee with 12 grower and handler members.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided*, That growers may cast votes for candidates who do not appear on the ballots: *Provided further*, That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 908.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided*, That the committee may recommend and the Secretary may

establish procedural rules and regulations to implement this section.

17. Section 908.23 is revised to read as follows:

§ 908.23 Selection.

From the nominations made pursuant to § 908.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member: *Provided*, That the Secretary shall select 11 or 12 members of the committee and an alternate and additional alternate for each member in the case of a 12- or 13-member committee, respectively, established pursuant to § 908.20(b). From the nominations made pursuant to § 908.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

18. Section 908.24 is revised to read as follows:

§ 908.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 908.22.

19. Section 908.26 is revised to read as follows:

§ 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the

committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

20. Section 908.27 is revised to read as follows:

§ 908.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member and, in the absence of such alternate, the additional alternate shall so act: *Provided*, That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 908.29 [Amended]

21. Section 908.29 is amended by removing paragraph (n).

22. Section 908.30 is amended by revising the title and paragraph (a) to read as follows:

§ 908.30 Voting procedures.

(a) A majority of the committee shall constitute a quorum, and any action of the committee shall require at least six concurring votes for an 11-member committee, and at least seven concurring votes for a 12- or 13-member committee established pursuant to § 907.20(b).

* * *

§ 908.104 [Removed]

23. Section 908.104 is removed.

Signed at Washington, DC, on June 6, 1988.
Kenneth A. Gilles,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-13030 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 998

[Docket No. AMS-FV-88-066]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Proposed Incoming and Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1988 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites written comments on changes in the current incoming and outgoing quality regulations and the terms and conditions of indemnification for 1988 crop peanuts. Two changes would be made in current incoming quality regulations. The first change would limit the quantity of loose shelled kernels in farmers' stock peanuts which can be acquired by handlers to improve the quality of storage peanuts and peanuts ultimately sold for edible use. The second would allow handlers to acquire peanuts with higher moisture levels in recognition of industry practices. With regard to outgoing quality regulations, the screen sizes used in grading minimum quality peanuts would be increased to remove small kernels. Such kernels tend to be immature and contribute to quality problems. The proposed changes are intended to improve the minimum quality of peanuts available for edible channels. The final change regarding indemnification would streamline the clearance procedures used in making indemnification payments to handlers incurring losses in disposing of rejected peanuts.

DATE: Comments must be received by June 24, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. The comments should reference the date and page number of this issue of the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement 146 [7 CFR Part 998; 53 FR 20291, June 3, 1988], regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 67 handlers of peanuts subject to regulations under Peanuts Marketing Agreement 146 [7 CFR Part 998], and there are about 46,950 peanuts growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas cover 16 states. Based upon the most current information, peanut production in 1987 is expected to total 3.6 billion pounds, 3.1 percent less than 1986, and 18.8 percent less than the record 1984 production of 4.4 billion pounds. The 1987 production value is expected to be \$1.02 billion; 1986 production value was \$1.07 billion.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanuts industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The peanut marketing agreement plays a very important role in the industry's quality control efforts. It has been in place since 1985 with practically

all U.S. shellers participating. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principle producer of aflatoxin) to be diverted to nonedible uses. Each lot of peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department of Agriculture or in laboratories approved by the Peanut Administrative Committee. The committee works with the Department of Agriculture in administering the marketing agreement program. The sampling and chemical analysis quality control programs are administered by the Department of Agriculture. Having complied with these requirements, provision is made for indemnification of sheller losses if the committee for Food and Drug Administration (FDA) deems the peanuts unsuitable because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulations specify the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulations require shellers to mill peanuts to meet certain quality specifications before such peanuts can be sold for edible outlets. Foreign material and damaged and immature peanuts are removed in this operation. Each lot of milled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. The end result is that only good quality peanuts end up in human consumption outlets.

The following changes in the incoming and outgoing quality regulations and indemnification procedures were unanimously recommended by the committee for the 1988 crop year.

The 1988 incoming quality regulations would be changed in two ways from the 1987 regulations. Paragraph (d)(1) of § 998.100 would be changed to provide that no handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, unless they are held separately until milled or shipped directly to a plant for prompt shelling. This change is intended to improve the quality of lots of peanuts milled for human consumption by limiting the quantity of loose shelled kernels in each lot. Experience has shown that loose shelled kernels tend to

have a higher incidence of aflatoxin than other components of farmers' stock peanuts. Loose shelled kernels are peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

The second change in the current incoming regulations would allow handlers to acquire or receive peanuts which can be dried to up to 10.49 percent moisture. Under paragraph (b)(1) of § 998.100 of the current incoming quality regulations, generally peanuts must be dried to 10.00 percent moisture and moisture determinations on farmers' stock peanuts are required to be rounded to the nearest whole number, except that when the moisture level is 10.01 percent to 10.49 percent, the moisture determination is required to be carried to the hundredths place. According to the committee, this has placed an undue burden on producers because their peanut drying equipment is not engineered to the point of drying peanuts on the farm with a maximum of 10 percent moisture without overdrying. This has resulted in an excessive amount of splitting during the milling process, which is not desirable. The change in the moisture limit, and the elimination of the exception concerning moisture determinations for farmers' stock peanuts to be carried to the hundredth place is expected to correct this problem without causing quality problems during storage.

Several changes are proposed in the 1988 outgoing quality regulations from those in effect for 1987 crop peanuts. One change would increase the sizes of the slotted screens used for determining fall through in minimum quality whole kernels. The table in paragraph (a) of § 998.200 would specify U.S. No. 1 screen-sizes (slotted) for all types of whole peanuts, including those in No. 2 Virginia. Currently, only screens with round openings are specified and used for determining fall through for split, broken, and whole kernels of No. 2 Virginia type peanuts.

Fall through includes sound split and broken kernels and whole kernels which pass through specified screen openings and must be disposed of in inedible outlets. The screen openings for whole Runner type peanuts would be changed from a 14/64 x 3/4 inch slot to a 16/64 x 3/4 inch slot, for whole Spanish and Valencia type peanuts from a 13/64 x 3/4 inch slot to a 15/64 x 3/4 inch slot, and for whole Virginia type including No. 2 Virginia peanuts, from a 14/64 x 1 inch slot to a 15/64 x 1 inch slot. With the proposed changes, No. 2 Virginia type peanuts would be graded using a 17/64 inch round screen for split and broken

kernels and a 15/64 x 1 inch slotted screen for whole kernels. The use of slotted screens in determining fall through of whole kernels in No. 2 Virginias would cause all Virginia type peanuts to be graded similarly.

The proposed screen opening changes are intended to improve the minimum quality available for edible trade channels. Research data which has been presented by scientists at North Carolina State University and the National Peanut Research Laboratory in Dawson, Georgia, clearly identify damaged kernels, loose shelled kernels and small immature kernels as the highest risk components in *Aspergillus Flavus* mold contamination. The screen size changes for all types of peanuts would eliminate the small kernels, which tend to be immature, from edible channels. This would lessen the chances of unwholesome peanuts entering such channels and would improve the flavor of peanuts and peanut products.

Some representatives from some peanut product manufacturers have contended that the proposed size changes would eliminate a sizable volume of peanuts which are currently being used. Others indicated that this section would cause them financial problems because they have made long term commitments into 1988-89 to supply peanut butter and other products using the peanuts to be removed from use. The proponents of the action acknowledged that some impact on supply would occur. However, they indicated that the proposed action continues the industry's goal of providing wholesome peanuts to edible channels that can be used safely and with confidence. The intent of removing small whole kernels from edible channels is to eliminate a category of peanuts that is known to be a major contributor to *Aspergillus Flavus* mold and aflatoxin.

These proposed changes are expected to remove five percent or less of the 1988 crop from edible channels based on shipments from 1976 to 1985. Hence, no material effect on the price of better quality peanuts is expected because of these changes. The price differences between the peanuts to be removed and the next better quality in 1984 and 1985 when large crops were produced averaged about five cents per pound. In 1986 and 1987 when short crops were produced, the differences were nearer 20 cents per pound. The short crops in 1986 and 1987 resulted from sharply reduced yields due to dry weather. If yields return to more normal levels, the 1988 production should be sharply higher. Within the last 25 years, dry weather

has not caused similar reductions in yields for three consecutive years.

One change is proposed in the Terms and Conditions for Indemnification for 1988 crop peanuts. This change would streamline the clearance procedures in making indemnification payments to handlers incurring crop losses due to aflatoxin. This would be done by paying handlers "quota" indemnification prices on eligible poundage up to 60 percent of the handler's net quota farmers' stock acquisitions. Sixty percent is the conversion factor for converting farmers' stock to shelled peanuts. This limitation would insure that no handler would receive indemnification payments at quota price levels for more peanuts than were actually acquired as quota peanuts. Approved claims on poundage in excess of that amount would be paid at "additional" indemnification prices, which are lower than quota prices. This distinction reflects market price differences between "quota" and "additional" peanuts.

The current clearance process requires a great deal of staff time. The proposed change is intended to reduce the amount of time the committee's staff now spends on handling certain indemnification claims and to make the system more efficient.

It is the Department's view that the proposed changes would help the peanut industry in providing that only good quality, wholesome peanuts for edible channels, which is vital to maintaining and expanding markets for peanuts and products such as peanut butter, cookies, and candies. The change is the moisture determination requirements would relieve an undue burden on peanut producers and, as such, would not result in additional costs. The proposed limitations on loose shelled kernels are expected to improve the quality of storage peanuts, thereby providing good quality peanuts for edible channels and reducing the committee's indemnification costs.

The committee's view is that the changes in the screen sizes for determining fall through are necessary to provide edible channels with good quality peanuts and to maintain the peanut industry's good quality image. No shortage of peanuts or substantial price increases are expected because of this action. The changes proposed in the indemnification procedures are intended to improve the clearance procedures by reducing staff time currently spent on handling certain claims. This proposed change would not be detrimental to handlers or the program.

Based on the above, the Administrator of AMS has determined that the proposed changes would not have a

significant economic impact on a substantial number of small entities.

The committee's recommendation, other information, and all written comments timely received in response to this request for comments will be considered before deciding whether or not to implement this proposal.

A comment period of less than 30 days is deemed appropriate for this proposal. The peanut crop year begins on July 1 and growers and handlers should be given as much notice as possible of the procedures and regulations applicable to 1988 crop peanuts which may be adopted as a result of this proposal so they can plan their operations.

List of Subjects in 7 CFR Part 998

Marketing agreement, peanuts.

For the reasons set forth in the preamble, 7 CFR Part 998 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR Part 998 [53 FR 20291, June 3, 1988] continues to read as follows:

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

2. In § 998.100, paragraph (b)(1), *Moisture and foreign material*, and paragraph (d), *Loose shelled kernels*, are revised for 1988 crop peanuts to read as follows:

§ 998.100 Incoming quality regulation—1988 crop.

(b) *Moisture and foreign material.*—(1) *Moisture.* Except as provided under paragraph (e) of this section, *Peanuts*, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmers' stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(d) *Loose shelled kernels.* No handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately

until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. 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— $1\frac{1}{4} \times \frac{3}{4}$ inch; Spanish and Valencia— $1\frac{5}{8} \times \frac{3}{4}$ inch; Virginia— $1\frac{3}{4} \times 1$ 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 screens are not separated from the kernels which do not ride the prescribed screens, 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.

3. In § 998.200, paragraph (a) *Shelled peanuts*, is revised for 1988 crop peanuts to read as follows:

§ 998.200 Outgoing quality regulation—1988 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 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 (a) shall be as follows:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners.....	17/64-inch round.	16/64 x 3/4-inch slot.
Spanish and Valencia.....	16/64-inch round.	15/64 x 3/4-inch slot.
Virginia.....	17/64-inch round.	15/64 x 1-inch slot.

4. Paragraph (v) of § 998.300 *Terms and conditions of indemnification* is revised for 1988 crop peanuts to read as follows:

§ 998.300 Terms and conditions of indemnification—1988 crop peanuts.

(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, and verified. Handlers electing non-physical supervision shall receive "quota" indemnification prices on peanuts indemnified, and they shall not be required to furnish Area Association verification. However, under no circumstance shall a handler be paid "quota" indemnification prices on poundage greater than 60 percent of the net "quota" Segregation 1 farmers' stock peanuts acquired by the handler.

Dated: June 3, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division, Agricultural Marketing Service.
[FR Doc. 88-13011 Filed 6-8-88; 8:45 a.m.]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-49-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspections of certain main landing gear (MLG) support link assemblies, and replacement, if necessary. This action would require the modification, or replacement, of the MLG support link assemblies with a new improved design. This additional modification is necessary to prevent failure of the support link shaft which, if not corrected, could result in damage to the wing and/or hydraulic system.

DATE: Comments must be received no later than August 1, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-49-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-49-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 68-17-01, Amendment 39-1228, effective June 15, 1971, to require the inspection for cracking of certain MLG support links, and replacement, if necessary. That action was prompted by reports of cracking in the bearing boss areas, caused by stress corrosion.

Since the issuance of that AD, there have been reports of cracking and/or corrosion of the MLG support link shaft. This cracking and corrosion has been attributed to the interference between the MLG support link shaft and the support link bushing, and/or lack of lubrication between the MLG support link shaft and bushing.

AD 68-17-01 requires replacement, if necessary, of certain MLG support links with a new link that is not susceptible to the stress corrosion that was experienced on the original links. Although there have been no reports of stress corrosion cracking problems on MLG support links replaced in accordance with AD 68-17-01, the FAA has determined that reworking them by installing lubrication provisions for the shaft, and reworking the bushing to eliminate the interference with the shaft, will correct the corrosion and cracking

associated with the MLG support link shaft.

Cracking or corrosion of the MLG support link shaft, if not detected and corrected, could result in the failure of the MLG support link shaft and damage to the wing and/or hydraulic system.

The FAA has reviewed and approved Boeing Service Bulletin 727-32-306, Revision 1, dated February 25, 1988, which describes the procedure for reworking the support link by the installation of lubrication fittings, and reworking the bushings.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 68-17-01, to require inspection and, if necessary, replacement of the MLG support link shafts; and inspection and, if necessary, reworking or replacing of the MLG support links and certain support link bushings; in accordance with the service bulletin previously mentioned.

It is estimated that 1,285 airplanes of U.S. registry would be affected by this AD, that it take approximately 22 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,130,800.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By superseding AD 68-17-01, Amendment 39-635, as amended by Amendment 39-1228, with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-32-306, Revision 1, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the support link shaft, which could result in damage to the wing and/or hydraulic system, accomplish the following:

A. Within the next 1,000 hours time-in-service since the last inspection in accordance with AD 68-17-01, and thereafter at intervals not to exceed 1,000 hours time-in-service until the requirements of paragraph B., below, are accomplished, perform an ultrasonic inspection of the P/N 65-19657-4, -5, -8, or -13 main landing gear (MLG) support link in accordance with Paragraph II, Accomplishment Instructions, Part I—Inspection Data, B. Ultrasonic Inspection Data of Boeing Service Bulletin 32-90, Revision 1, dated May 29, 1968, or Boeing Service Bulletin 32-189, dated May 25, 1971. If any cracks are detected, prior to further flight, perform visual and magnetic particle inspections of the MLG support link shaft as described in paragraph B., below, and replace or modify the MLG support link and bushing accordingly.

B. Within the next 5,000 hours time-in-service or two years after the effective date of this AD, whichever occurs sooner, perform a visual inspection of the MLG support link shaft for corrosion and a magnetic particle inspection for cracks. If any corrosion and/or cracks are detected in the MLG support link shaft, prior to further flight, repair or replace in accordance with Section 32-01-02 of the Boeing 727 Landing Gear Overhaul Manual. In addition, replace or modify the MLG support link, P/N 65-19657-4, -5, -8, -11, -13, -15, -16, or -18, and associated bushings, as necessary, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727-32-306, Revision 1, dated February 25, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 31, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12930 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240, 249, 270, and 274

[Rel. Nos. 33-6778; 34-25777; IC-16421; File No. S7-8-88]

Reporting Requirements for Issuer's Change of Fiscal Year; Financial Reporting Changes; Period To Be Covered by First Quarterly Report After Effective Date of Initial Registration Statement

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rules.

SUMMARY: The Commission today is publishing for comment proposed amendments to Regulations 13A and 15D under the Securities Exchange Act of 1934 that would revise the reporting and filing requirements for an issuer that changes its fiscal year end and for a successor issuer with a different fiscal year from its predecessor. Amendments also are proposed to Form 8-K to require reporting of a change in fiscal year. Rule 30b1-3 under the Investment Company Act of 1940 is proposed to govern the reporting requirements for investment companies that change their fiscal year end. A new accounting Rule 3-06 and

other amendments to the accounting and proxy rules relating to financial reporting are proposed. Finally, amendments to the quarterly reporting rules are proposed to modify the period covered in a new registrant's first quarterly report.

DATE: Comments should be received by the Commission on or before August 8, 1988.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-8-88. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT:

Howard P. Hodges or Joseph S. Aleknavage, (202) 272-2553, Office of the Chief Accountant of the Division of Corporation Finance, or Barbara J. Green, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. With respect to investment companies contact Lawrence A. Friend, (202) 272-2106, Office of Disclosure and Review, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed revisions to Rules 12b-25,¹ 13a-10,² 13a-13,³ 14a-3,⁴ 15d-10,⁵ and 15d-13⁶ under the Securities Exchange Act of 1934 ("Exchange Act"),⁷ as well as proposed revisions to Forms 8-K⁸ 10-K,⁹ 10-Q,¹⁰ 20-F,¹¹ and 12b-25.¹² A new accounting Rule 3-06 and amendments to Rule 3-12¹³ of Regulations S-X¹⁴ also are proposed. With respect to investment companies, proposed new Rule 30b1-3 and proposed amendments to Rules 8b-16¹⁵ and 30b1-2¹⁶ and Form N-SAR¹⁷ under the

Investment Company Act of 1940 ("Investment Company Act")¹⁸ are being published for comment.

I. Executive Summary

Current Exchange Act Rules 13a-10 and 15d-10, titled "Interim Reports," set forth reporting requirements applicable when an issuer changes its fiscal year end. Pursuant to these rules, the issuer is required to file an "interim report" with the Commission to provide financial and other information about any "interim period" of three or more months resulting when the issuer changes its fiscal year end. The interim period runs from the end of the most recently concluded fiscal year to the opening date of the new fiscal year¹⁹ and must be reported in the format required for the issuer's annual report. The Commission has required such reports to assure that a continuous financial and business history of issuers will be filed publicly and available to investors and the marketplace.

Rules 13a-10 and 15d-10 were adopted in 1948²⁰ and have not been revised to take account of the rules requiring quarterly reporting on Form 10-Q, which were adopted in 1970.²¹ Rules 13a-10 and 15d-10 also have not been updated to conform to revised timing requirements for filing Form 10-K, the annual reporting form used by most public companies.²² The amendments proposed in this release are intended to update these rules and integrate them with the current periodic reporting requirements. Further, amendments to Rules 13a-10 and 15d-10 are proposed to codify current rule interpretations and address issues concerning quarterly reporting that are raised repeatedly by registrants when changing their fiscal year end.

A. Transition Reports

The proposed amendments would restructure substantially Rules 13a-10 and 15d-10. To avoid confusion with other reports, such as quarterly reports, that also commonly are referred to as

interim reports, the reports required pursuant to Rules 13a-10 and 15d-10 would be designated "transition reports," and the period resulting when an issuer changes its fiscal year called a "transition period."²³

Current Rules 13a-10 and 15d-10 require that transition reports be filed on the appropriate annual reporting form, usually Form 10-K, for any transition period of three or more months. The proposals would require transition reports for all transition periods, regardless of length, but permit issuers to use the abbreviated reporting format of Form 10-Q for reporting on transition periods of less than six months. Transition reports on Form 10-K would be required for transition periods of six or more months. Like current Rules 13a-10 and 15d-10, the proposed amendments would permit issuers to file unaudited financial statements for transition periods shorter than six months and require that separate audited financial statements for such periods be filed in the next annual report.

To conform the filing requirements for transition reports to those applicable to Forms 10-Q and 10-K, the proposals would change the current 120 day filing period for transition reports to 45 days, in the case of a transition report on Form 10-Q, and 90 days, in the case of a transition report on Form 10-K. The proposed amendments also would codify the reporting requirements for an issuer changing its fiscal year end for a particular fiscal year after the end of that year, and would make clear the obligation to file an annual report for any fiscal year that ended before the issuer determined to change its fiscal year end.

B. Quarterly Reporting Requirements

The proposed rules would codify the staff practice of requiring quarterly reports for each quarterly period within the transition period. Under the proposed rules, the issuer would continue to have the option to file such quarterly reports based upon the quarters of either the old or newly adopted fiscal year. Issuers also would, in most circumstances,²⁴ be required to

¹ 17 CFR 240.12b-25.

² 17 CFR 240.13a-10.

³ 17 CFR 240.13a-13.

⁴ 17 CFR 240.14a-3.

⁵ 17 CFR 240.15b-10.

⁶ 17 CFR 240.15d-13.

⁷ 15 U.S.C. 78a et seq.

⁸ 17 CFR 249.308.

⁹ 17 CFR 249.310.

¹⁰ 17 CFR 249.308a.

¹¹ 17 CFR 249.220f.

¹² 17 CFR 249.322.

¹³ 17 CFR 210.3-12.

¹⁴ 17 CFR 210.1-01-12-39.

¹⁵ 17 CFR 270.8b-16.

¹⁶ 17 CFR 270.30b1-2.

¹⁷ 17 CFR 274.101.

¹⁸ 15 U.S.C. 80a-1 et seq.

¹⁹ For example, if an issuer whose most recent fiscal year ended on December 31, 1987 decides to change its fiscal closing date to June 30, 1988, the period for which a report must be filed under either Rule 13a-10 or 15d-10 would be January 1, 1988 through June 30, 1988.

²⁰ Release No. 34-4194 (December 17, 1948) [13 FR 9325-26].

²¹ Rules 13a-13 and 15d-13 were adopted in Release No. 34-9004 (October 28, 1970) [35 FR 17537].

²² In 1970, the Commission revised Form 10-K. Among other changes, the time for filing Form 10-K was shortened from 120 to 90 days after the end of the fiscal year. Release No. 34-9000 (October 21, 1970) [35 FR 16919].

²³ Although current Rules 13a-10 and 15d-10 refer to interim reports and interim periods, for clarity, this Release will use the term "transition" instead of "interim" when discussing the current rules as well as the proposed amendments.

²⁴ Issuers would not be required to file a quarterly report for a quarterly period of the old fiscal year where the last day of the quarter also is the last day of the transition period.

file a quarterly report for any quarterly period of the old fiscal year that ended before the date on which the issuer determined to change its fiscal year end.

Further, the proposals would give needed guidance as to when an issuer must begin filing quarterly reports on the basis of the newly adopted fiscal year. The proposals would make it clear that no reports on the new basis would be required for any period before the issuer's determination to change its fiscal year end. The requirement to file quarterly reports on the new basis would begin with the first quarter in the new fiscal year that ends after the issuer determined to change its year end.

C. Successor Issuers

Unlike the current rules, the proposed amendments would specify transition reporting requirements for successor issuers only where they have a different fiscal year end from that of the predecessor. Successor issuer reporting where the successor and predecessor have the same fiscal year end is covered by other current rules. As proposed, a successor issuer would be required to file a transition report for the transition period between the close of the fiscal year covered by the last annual report of its predecessor and the date of succession. The proposed amendments would cover explicitly all successor issuers; currently, only those with securities registered on Form 8-B²⁵ are covered. Current Rule 15d-10 has no provision governing the transition reporting of successor issuers; such a provision would be added.

D. Foreign Private Issuers

Historically, a change in fiscal year has been rare for foreign private issuers. Where the circumstances have arisen, however, the transition reporting obligations of such issuers have been addressed on a case-by-case basis. The proposed amendments would spell out transition reporting requirements for foreign private issuers authorized to file annual reports on Form 20-F. A foreign private issuer with a transition period of less than six months would be permitted to file a transition report on Form 20-F with responses to only a few specified items and unaudited financial statements. For a transition period of six or more months, a foreign private issuer would file a Form 20-F containing responses to all items required when the Form is used as an annual report, including audited financial statements.

E. Proposed Amendments to Form 8-K

A proposed new item of Form 8-K would require an issuer to report in a Form 8-K the determination to change its fiscal year end and the date of its new fiscal year end. The Form 8-K would be required to be filed within 15 days after the date of the issuer's decision to adopt a new fiscal year.

F. Filing Fees and Extensions of Time

The proposed amendments would make explicit that no filing fee is required for transition reports. Proposed amendments to Rule 12b-25 and Form 12b-25 would add transition reports to those reports for which an extension of time for filing is available.

G. Investment Companies

New Rule 30b1-3 under the Investment Company Act is proposed to provide for transition reporting obligations of registered investment companies. The new Rule would require investment companies that change their fiscal year end to file a report on Form N-SAR within 60 days of either the close of the resulting transition period or the date of the determination to change the fiscal year end, whichever is later.

H. Proposed Amendments to the Accounting and Proxy Rules

A proposed new accounting Rule 3-06, to be added to Regulation S-X, would codify the staff's practice of accepting, under the specified circumstances, financial statements covering a nine to 12 month period in satisfaction of a requirement for financial statements for either one year or one year of a multiple year period. A parallel note is proposed to be added to Rule 14a-3(b)(1)²⁶ of the proxy rules.

I. Proposed Amendment to Assure Timely Financial Statements of First-Time Registrants

Rule 3-12 of Regulation S-X is proposed to be amended to specify that the most recent audited financial statements in a registration statement under the Securities Act of 1933 (the "Securities Act")²⁷ or on Form 10²⁸ under the Exchange Act may not be more than one year and 45 days old if the issuer was not a reporting company before filing the registration statement. Such amendment would be consistent with those requirements of Rule 3-01 of Regulation S-X²⁹ that set limits on the

age of financial statements in a registration statement of a newly reporting company.

J. Quarterly Reporting Obligations for New Registrants

In addition, the Commission is proposing amendments to Rules 13a-13 and 15d-13, the quarterly reporting rules. Under the current rules, a new registrant is not required to file its first quarterly report with updated financial statements until 45 days after the end of the first fiscal quarter ending after the date of effectiveness of its registration statement. The accounting rules permit financial statements in an initial registration statement to be up to 134 days old on the date of effectiveness. Thus, in cases where an initial registration statement is declared effective between 91 and 134 days after the end of a fiscal quarter or year, the new registrant is not required to file a separate quarterly report for the quarter prior to the date of effectiveness. To close this gap, the proposed amendments would require a new registrant to file its first report on Form 10-Q for the quarter commencing with the end of the latest quarterly or annual period covered by the most recent financial statements included in its registration statement.

An Appendix in Part VI of this Release ("Appendix") sets forth examples to illustrate the application of the proposed rules to some typical reporting situations.

II. Discussion

A. Reporting Fiscal Year Changes

1. *Current Transition Reporting Requirements.* Current Rules 13a-10 and 15d-10³⁰ require an issuer that changes its fiscal year to file a separate report on its annual reporting form³¹ covering the resulting transition period if the transition period covers a time span of three or more months. The report must be filed within 120 days after the close of the transition period or the date of the determination to change the fiscal year end, whichever is later. The financial statements included in the report need not be audited if the transition period is less than six months and separate audited financial statements for the

³⁰ Rule 13a-10 applies to issuers with securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78f]. Rule 15d-10 applies to issuers with securities registered under the Securities Act and filing Exchange Act reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)].

³¹ The annual reporting form used by most public companies is Form 10-K, but, in the case of most foreign private issuers, Form 20-F is used.

²⁶ 17 CFR 240.14a-3(b)(1).

²⁷ 15 U.S.C. 77a et seq.

²⁸ 17 CFR 249.210.

²⁹ 17 CFR 210.3-01.

²⁵ 17 CFR 249.208b.

transition period are filed in the next annual report. If the transition period is shorter than three months, no separate report audited financial statements covering the transition period are filed with the next annual report.

2. Proposed Transition Reporting Requirements—a. *Transition Reporting on Forms 10-Q and 10-K.* The proposed amendments to Rules 13a-10 and 15d-10 would require an issuer to file reports for all transition periods, including those of less than three months. Transition reports for periods shorter than six months, however, would be filed on Form 10-Q, the quarterly reporting form, rather than Form 10-K.³² For transition reports covering transition periods of six or more months, issuers would continue to use Form 10-K.³³ Issuers would be required to provide all information requested in the textual items of the reporting forms, as well as the required financial information.³⁴ Technical changes to make the description and cover sheets of and General Instructions to Forms 10-Q and 10-K consistent with the proposed amendments also are proposed.

Permitting the use of Form 10-Q for transition periods of up to six months would extend the period between an issuer's audited financial statements to up to 17 months.³⁵ A six month cutoff would balance the costs of preparing audited financial statements with the investor's need for timely audited financial statements. Allowing the use of Form 10-Q also would reduce substantially the reporting obligations of those issuers that change their fiscal

year end by three but less than six months.

The Commission requests comment on the proposed six month cutoff as well as alternative cutoffs based upon a shorter period, such as three months, or a longer period, such as seven or eight months. The Commission specifically solicits comment on what the additional costs of providing information on transition periods of less than three months would be, if any, given that the audited information must be filed with the next annual report. Comment also is requested on the extent of the additional benefits that would be provided to investors by requiring transition reports for periods of less than three months, in light of the fact that audited financial statements for such periods would be required in any event with the next annual report.

b. *Provisions on Changing a Fiscal Year After the Year End.* The current rules do not specify the reporting requirements where an issuer decides to change its closing date for a particular fiscal year after the end of that fiscal year. Under current interpretations of the rules, an issuer must file an annual report for the recently concluded fiscal year if the issuer had not changed its fiscal year end before concluding the fiscal year.

The proposed amendments would codify the interpretation by requiring that an issuer file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end.³⁶ This date, as evidenced by minutes of the board of directors or an authorized committee thereof, would be the date reported in the issuer's Form 8-K.³⁷

The proposed amendments also would codify the current interpretive position that a transition report can be used only for periods of less than 12 months. This requirement would assure that audited financial statements would be provided by the issuer at least every 17 months.

c. *Filing Requirements for Transition Reports.* Under current Rules 13a-10(a)³⁸ and 15d-10(a),³⁹ a transition report must be filed within 120 days after the close of the transition period or after the date of the determination to change the fiscal closing date, whichever is later. The proposed amendments would change the time for filing transition reports to parallel current requirements applicable to

Forms 10-Q and 10-K. Thus, those transition reports on Form 10-K would be filed 90 days after the later of these two events⁴⁰ and those on Form 10-Q would be filed 45 days after the later of these two events.⁴¹

d. *Auditing Requirements For Financial Information in Transition Reports.* Current Rules 13a-10(c)⁴² and 15d-10(b)⁴³ permit an issuer to file financial statements that are not audited with a report covering a transition period shorter than six months. The issuer must file with its next annual report separate audited financial statements covering the transition period. A transition report covering a period of six or more months must include separate audited financial statements.

The proposed amendments would not change an issuer's obligation with respect to providing audited financial statements for the transition period. As proposed, financial statements in transition reports on Form 10-K would be audited, while unaudited financial statements would be permitted in transition reports on Form 10-Q. This parallelism with the requirements of Form 10-K and 10-Q was a reason for using the six month mark to distinguish between transition periods that would be reported on quarterly forms and those on annual forms.

The proposed Rules would require transition reports on Form 10-K to include either financial statements, which may be unaudited, for the comparable period of the prior year, or a footnote, which may be unaudited, giving specified information for the comparable period of the prior year.⁴⁴ The prior year footnote information would have to state, at a minimum, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles, and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also would have to be shown, if applicable. Per share data based upon such income or loss and net income or loss would be required to be presented

³² See proposed Rules 13a-10(c) and 15d-10(c) and Appendix Examples 1.a., 1.b., & 1.d.

³³ See proposed Rules 13a-10(b) and 15d-10(b) and Appendix Examples 1.c., & 1.e.

³⁴ Form 10-Q provides a more abbreviated reporting format than Form 10-K. In addition to condensed unaudited financial information and an updating of management's discussion and analysis of financial condition and results of operations, Form 10-Q calls for information relating to a limited number of subjects such as legal proceedings, changes in securities, defaults on senior securities and the submission of matters to a security holder vote. In contrast, Form 10-K requires audited financial statements and more comprehensive disclosure about the business of the issuer and its operations and activities during the reporting period.

³⁵ The proposals would allow an issuer to go 17 months without filing audited financial statements in the case where an issuer changes its fiscal year end with a resulting transition period of 5 months. For example, an issuer with a December 31 year end that changes its fiscal year end to May 31, 1988 would be permitted to file a Form 10-Q including unaudited financial statements covering the transition period from January 1, 1988 through May 31, 1988. The issuer would not be required to file audited financial statements until August 29, 1989, the due date for its next annual report covering the newly adopted fiscal year from June 1, 1988 through May 31, 1989.

³⁶ See proposed Rules 13a-10(a) and 15d-10(a).

³⁷ For a discussion of the proposed new Item of Form 8-K, see II.A.2.h., "Reporting Fiscal Year Changes on Form 8-K," *infra*.

³⁸ 17 CFR 240.13a-10(a).

³⁹ 17 CFR 240.15d-10(a).

⁴⁰ See proposed Rules 13a-10(b) and 15d-10(b) and Appendix Examples 1.c. & 1.e.

⁴¹ See proposed Rules 13a-10(c) and 15d-10(c) and Appendix Examples 1.a., 1.b., & 1.d.

⁴² 17 CFR 240.13a-10(c).

⁴³ 17 CFR 240.15d-10(b).

⁴⁴ See proposed Rules 13a-10(b) and 15d-10(b).

in conformity with applicable accounting standards.⁴⁵

Consistent with existing requirements for Form 10-Q, a transition report on Form 10-Q would be required to include financial information about the comparable period of the prior year.⁴⁶ As under the current rules, separate audited statements of income and cash flow covering the transition period would be required to be filed as part of the first annual report for the newly adopted fiscal year.⁴⁷ The Commission solicits comment on whether the audited statement on cash flow should be permitted to cover the period from the end of the last fiscal year through the end of the newly adopted fiscal year. Under the proposed rules, as under the current rules,⁴⁸ the annual report need not contain a separate audited balance sheet for a transition period of less than six months provided that an audited balance sheet as of the end of the prior fiscal year is filed. The proposed amendments also would specify that notes to the financial statements for the transition period included in the annual report may be integrated with the notes for the full fiscal period.

e. Quarterly Reporting When an Issuer Changes Its Fiscal Year. Issuers frequently seek guidance from the staff as to the precise application of the quarterly reporting requirements in change of fiscal year circumstances. The proposed amendments to Rules 13a-10 and 15d-10 are intended to clarify the requirements for filing quarterly reports in such circumstances.⁴⁹

The proposed amendments would codify the current staff practice of requiring issuers to file quarterly reports during the transition period. The proposed amendments also would continue to afford companies the option of filing such quarterly reports based on the quarters of either the old or newly adopted fiscal year.⁵⁰ Under either

option, an issuer still would be required to file a quarterly report for any quarter of the old fiscal year that ended before the date on which the issuer determined to change its fiscal year end (except, of course, where the last day of the quarter also is the last day of the transition period).⁵¹

The proposed amendments would specify the time by which an issuer must begin filing quarterly reports on the basis of the newly adopted fiscal year. Under the proposals, an issuer would be required to begin filing quarterly reports on the new basis with the quarterly report for the first quarter of the new fiscal year ending after the issuer determined to change its fiscal year end.⁵² No reporting on the new basis of those quarterly periods ending before the issuer's determination to change its year end would be required.

The switch in quarterly reporting from the old to the new fiscal year may result in a period of less than three months that would not be covered by a separate report on Form 10-Q. Such a period, however, would be covered on a cumulative basis in the next report on either Form 10-Q or Form 10-K or in a transition report, depending on when the switch occurred.⁵³

March 31, June 30, and September 30, 1988 or for the periods coinciding with quarters of the new fiscal year ending January 31, April 30, and July 31, 1988. If the same issuer had decided on June 1, 1988 to change its year end to October 31, 1988, the issuer already would have filed a quarterly report for the quarter ending March 31, 1988 but still would have the option to file the quarterly reports either for the quarters of the old fiscal year ending June 30 and September 30, 1988 or for the period coinciding with the quarter of the new fiscal year ending July 31, 1988.

⁴⁵ For example, an issuer with a December 31 year end that decides on October 15, 1988 to change its year end to November 30, 1988 would be required to file by November 14, 1988 a quarterly report on Form 10-Q for the quarter ending September 30, 1988 of the old fiscal year. If the same issuer decided on October 15, 1988 to change its year end to September 30, 1988, the issuer would not be required to file a quarterly report on Form 10-Q for the quarterly period ending September 30, 1988 of the old fiscal year, because the last day of the quarter would be the same as the last day of the transition period. In that event, a transition report on Form 10-K would be required to be filed to cover the period from January 1, 1988 through September 30, 1988.

⁵² In the first example in footnote 51, a Form 10-Q would be required for the first quarter (ending February 28, 1989) of the new fiscal year.

⁵³ For example, an issuer with a December 31 year end decides on June 1, 1988 to change its year end to October 31, 1988 and begins filing quarterly reports based on the quarters of the new fiscal year with the quarterly report for the quarter ending July 31, 1988. Under the proposals, the period from April 1 through April 30, 1988 would not be covered by a separate report on Form 10-Q but would be covered on a cumulative basis in the quarterly report filed for the quarter ending July 31, 1988.

Form 10-Q requires data for the comparable period of the prior fiscal year. Issuers that change to new fiscal years that do not coincide with the end of a quarter of the previous fiscal year frequently have inquired as to the need to recast prior year quarterly financial information so that reports on Form 10-Q for the new fiscal year include information for the comparable periods of the prior year. In those cases in which recasting of prior year financial information has not been practicable or was inordinately costly, issuers have been permitted to forego recasting the prior year financial information where adequate information has been provided as to seasonal and other factors that would affect the trends reflected by the data. The proposed amendments codify this approach. A new Note to paragraphs (c) and (d) of Rules 13a-10 and 15d-10 would permit issuers to file quarterly reports for the quarters of the new fiscal year without recasting data for the prior fiscal year, where recasting either is not practicable or cannot be cost-justified, if the issuer furnishes (1) financial statements for the quarters of the preceding fiscal year most nearly comparable to the quarters in the newly adopted fiscal year; (2) an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected; (3) an assessment of the comparability of the data; and (4) a representation as to the reason the recasting has not been undertaken. The Note also would be applicable to prior year information in transition reports on Form 10-Q.⁵⁴

f. Transition Reporting for Successor Issuers. Current Rule 13a-10(b)⁵⁵ sets forth reporting requirements for successor issuers that have securities registered on Form 8-B.⁵⁶ Under the Rule, every issuer having securities registered on Form 8-B is required to file a transition report concerning its predecessor covering the transition period between the close of the fiscal year covered by the predecessor's last

⁵⁴ The proposals would not require an issuer that decides to change its year end after having filed quarterly reports based on the old fiscal year to file new Form 10-Qs for those quarters of the new fiscal year already concluded. However, pursuant to item 302(a) (5) of Regulation S-K [17 CFR 229.302(a) (5)], specified issuers must provide selected financial data for each full quarter of the two most recent fiscal years in their annual report on Form 10-K. Accordingly, the first annual report on Form 10-K of such an issuer after a fiscal year change would be required to contain quarterly information for the new fiscal year.

⁵⁵ 17 CFR 240.13a-10(b).

⁵⁶ Form 8-B is a registration form mainly used for the securities of an issuer that has no registered securities but has succeeded to an issuer with registered securities.

⁴⁵ The proposals for prior year footnote information would track Rule 1-02(aa) of Regulation S-X [17 CFR 210.1-02(aa)] except that disclosure of income taxes would be required under the proposals because such information is pertinent to understanding the fluctuations in earnings and earnings trends.

⁴⁶ See I.A.2.e., "Quarterly Reporting When an Issuer Changes Its Fiscal Year," *infra*, for a discussion of a proposed Note to paragraphs (c) and (d) of Rules 13a-10 and 15d-10 that addresses difficulties in providing comparable period financial information.

⁴⁷ See Proposed Rules 13a-10(c) and 15d-10(c).

⁴⁸ See Rule 13a-10(d) [17 CFR 240.13a-10(d)] and Rule 15d-10(c) [17 CFR 240.15d-10(c)].

⁴⁹ See proposed Rules 13a-10(d) and 15d-10(d).

⁵⁰ Thus, under the proposals, an issuer with a December 31 year end that decided on February 1, 1988 to change its year end to October 31, 1988 would have the option of filing quarterly reports either for the quarters of the old fiscal year ending

annual report and the beginning of the successor's first fiscal year after the succession. The transition report must be filed within 120 days after the close of the transition period. If the report covers a period of less than six months, the financial statements filed therewith need not be audited, but, if they are not audited, the issuer must file with its next annual report separate audited financial statements covering the transition period. Rule 15d-10 currently has no parallel provision.⁵⁷

While current Rule 13a-10(b) applies to successions even where the successor and predecessor do not have a different fiscal year, the proposed amendments would specify transition reporting requirements only for successor issuers with a different fiscal year end from that of the predecessor.⁵⁸ No transition report would be required where the successor issuer and the predecessor have the same fiscal year end.⁵⁹ Under such circumstances, the successor would continue on the same reporting schedule as that of the predecessor.⁶⁰

The proposed amendments would cover explicitly all successor issuers,⁶¹ not just those with securities registered on Form 8-B.⁶² Companies with reporting obligations pursuant to section 15(d) would be covered by a parallel provision added to Rule 15d-10. There is no reason to treat section 15(d) company successor issuers differently from other successor issuers in this respect.⁶³

The proposed rules for transition reporting of successor issuers would correspond generally to the transition reporting rules applicable when other issuers change their fiscal year end. The

principal difference would be the period covered in the transition report. Under the proposals, the transition period to be reported by successor issuers would end on the date of the succession, rather than on the last day of the old fiscal year, in order for the transition report to reflect the predecessor's operations separately from those of the combined entity.

As with the proposed rules generally governing changes in fiscal year, the proposed amendments would require, for a transition period shorter than six months, the successor issuer to file a transition report, containing information about the predecessor, on Form 10-Q with unaudited financial statements. The report would be filed 45 days after the date of the succession. The next annual report of the successor issuer would be required to include audited statements of income and cash flow for the transition period. For a transition period of six or more months, the successor issuer would be required to file the transition report on Form 10-K with audited financial statements 90 days after the date of the succession.

g. Transition Reporting for Foreign Private Issuers. Foreign private issuers that file annual reports on Form 20-F⁶⁴ are not required to file quarterly reports on Form 10-Q. These issuers are required to file annual reports on Form 20-F within six months after the end of the fiscal year. Current Rules 13a-10 and 15d-10 do not address separately the transition reporting requirements of foreign private issuers.

A change in fiscal year has been rare for foreign private issuers, and the resulting transition reporting obligations have been addressed on a case-by-case basis. The factors taken into account have included the different reporting obligations of such issuers under U.S. law, and the different reporting requirements and practices of the domicile country.

The Commission is proposing amendments to Rules 13a-10 and 15d-10 that would set forth separate transition reporting requirements for foreign private issuers.⁶⁵ Under the proposed

amendments, a foreign private issuer that has changed its fiscal year end would be required to file a Form 20-F to report on any transition period. However, where the transition report covers a transition period of less than six months, the issuer would be required to respond only to a limited number of specified items on Form 20-F. These items, which cover most of the subjects covered in a Form 10-Q, include: Item 3, Legal Proceedings; Item 9, Management's Discussion and Analysis of Financial Condition and Results of Operations; Item 15, Defaults Upon Senior Securities; Item 16, Changes in Securities and Changes in Security for Registered Securities; and either Item 17 or 18, Financial Statements.⁶⁶ The Commission requests comment on the appropriateness of the items selected and on whether additional Form 20-F items should be included.

Unaudited financial statements would be permitted in a transition report on Form 20-F covering a period of less than six months if the next annual report on Form 20-F included audited statements of income and cash flow for the transition period. Comment is requested on whether, alternatively, the Commission should permit foreign private issuers to file transition reports on Form 20-F responding only to the selected items and including unaudited financial statements where the transition period is six or fewer months in length, rather than less than six months, in view of the semi-annual interim financial reporting that is required by some exchanges or is customary for some foreign private issuers. Comment also is solicited on whether the Commission should excuse foreign private issuers from providing financial statements in transition reports for periods shorter than six months if they are not required otherwise to develop such statements under the laws or practices of their domicile country, or any exchange upon which their securities trade. If such an exception were made, the Commission would not anticipate relieving such issuers of the obligation of file audited financial statements covering such transition periods when the next audited financial statements are required to be filed.

Where a transition report on Form 20-F covers a period of six or more months, the foreign private issuer would be required to respond to all of the items to

⁵⁷ Rule 15d-5 [17 CFR 240.15d-5], like Rule 12g-3 [17 CFR 240.12g-3], sets forth reporting requirements of successor issuers, but does not specify requirements for transition reporting of successor issuers.

⁵⁸ See proposed Rules 13a-10(e) and 15d-10(e).

⁵⁹ Other current reporting requirements for successor issuers and the Division's current interpretive positions respecting disclosures by successor issuers would not be affected. In particular, where there is a change in accounting basis between the successor and predecessor, the quarterly or annual report for the period in which the succession occurs would be required to state separately the income and cash flow statements to reflect the periods prior and subsequent to the succession.

⁶⁰ See Rules 12g-3 and 15d-5.

⁶¹ See Rule 12b-2 [17 CFR 240.12b-2], which defines succession and, correlatively, successor.

⁶² Currently, many successions are reported on Form 8-K in lieu of Form 8-B. See Release No. 34-9072 (February 10, 1971) [36 FR 3804].

⁶³ Where the successor issuer and the predecessor have a different fiscal year end and the succession is solely for the purpose of forming a holding company or changing the state of incorporation, the succession would be viewed as any other change in fiscal year and not subject to the provisions of proposed Rules 13a-10(e) and 15d-10(e).

⁶⁴ Form 20-F is used by foreign private issuers as a registration statement, as well as an annual report. A Canadian foreign private issuer may use Form 20-F as either a registration statement or annual report only if the issuer does not have or had not had during the 12 months prior to the filing of the registration statement or annual report any class of securities registered under section 12(b) [15 U.S.C. 78j(b)] or a reporting obligation under Section 15(d) and such issuer had not issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10-K.

⁶⁵ See proposed Rules 13a-10(f) and 15d-10(f).

⁶⁶ The only subject covered in a separate item in Form 10-Q that would not be included in a transition report on Form 20-F is the submission of matters to a security holder vote. This subject is not covered as a separate item in Form 20-F.

which such issuers must respond when Form 20-F is used as an annual reporting form.⁶⁷ Audited financial statements would be required for transition reports on Form 20-F that cover a period of six or more months. The proposals would specify that a transition report on Form 20-F shall not cover a period longer than 12 months. Technical changes also are proposed to make the description and cover sheet of and General Instructions to Form 20-F consistent with the proposed amendments.

The proposed amendments would require that a transition report on Form 20-F covering a period of less than six months be filed within three months after either the close of the transition period or the date of the determination to change the fiscal year, whichever is later. A three month filing period is proposed because of the difficulties foreign private issuers may have in preparing reports not required by the laws or customs of their domicile countries or exchange upon which their securities are traded. The Commission requests comment as to whether the proposed three month filing period is too long for investors' needs and whether a shorter period, such as two months of 45 days, should be used. Comment also is solicited on the problems foreign private issuers may have in complying with a three month filing requirement and whether the period should be longer, such as four, five or six months.

Under the proposals, a transition report on Form 20-F covering six or more months would be required to be filed within six months after the later of the close of the transition period or the date of the determination to change the fiscal year. The six month filing period proposed parallels the period provided for annual reports on Form 20-F. Comment is requested on the proposed six month filing period, and whether a shorter period, such as three or four months, should be used. Finally, comment also is requested on whether separate provisions for the transition reporting obligations of foreign private issues are necessary or whether such obligations should continue to be determined on a case-by-case basis.

h. Reporting Fiscal Year Changes on Form 8-K. The Commission also is proposing amendments to require an issuer to report in a Form 8-K its decision to adopt a new fiscal year in response to a new Item 8. Under the proposals, the issuer would report both

the date of its determination to change its fiscal year end and the date of its new fiscal year end.⁶⁸ A current report on Form 8-K would be required to be filed within 15 days after the date of the issuer's determination to change its fiscal year end. Formalizing the means of notifying shareholders and the trading markets of a change in reporting periods should eliminate confusion and misapprehension as to the reasons for issuers' financial reports not being filed and should provide an orderly and reliable mechanism for getting news of the change to investors.

i. Filing Fees and Extensions of Time. Rules 13a-13 and 15d-13 do not require a filing fee for quarterly reports on Form 10-Q. Rules 13a-1⁶⁹ and 15d-1⁷⁰, however, do require issuers to pay a \$250 filing fee upon filing an annual report. The current rules do not address filing fees for transition reports, even though transition reports currently are filed on the annual reporting form. The proposed amendments to Rules 13a-10 and 15d-10 would make it explicit that no filing fee is required for a transition report.⁷¹

The Commission also is proposing amendments to Rule 12b-25, Form 12b-25, and the description of the Form. Rule 12b-25 provides an extension of time for filing if an issuer gives notification of Form 12b-25 of its inability to file on a timely basis a report on Form 10-K, 20-F, 11-K, 10-Q or N-SAR and the reasons therefor. The proposed amendments would add transition reports to those reports covered by the Rule and Form.⁷² Consistent with the current extension periods for Forms 10-K and 10-Q, the extension for a transition report on Form 10-K would be 15 calendar days after the due date and the extension for a transition report on Form 10-Q five calendar days after the due date.

j. Transition Reporting for Investment Companies. Instead of filing annual and quarterly reports on Forms 10-K and 10-Q, registered management investment companies file semi-annual reports on Form N-SAR, while unit investment trusts file only annual reports on Form N-SAR.⁷³ Therefore, the Commission is

proposing to (1) exempt registered investment companies from Rules 13a-10 and 15d-10,⁷⁴ and (2) adopt a new Rule under the Investment Company Act specifying their transition reporting obligations.⁷⁵ The new Rule would require investment companies that change their fiscal year end to file a report on Form N-SAR within 60 days of either the close of the resulting transition period or the date of the determination to change the fiscal year, whichever is later.⁷⁶

Under the proposed Rule, the transition report filed by a management investment company would cover a period no longer than six months, and a report filed by a unit investment trust would cover a period no longer than 12 months. These are the periods ordinarily covered by a report on Form N-SAR. The new Rule would not specify the period the transition report must cover and, in certain circumstances, an investment company would have a choice between two periods.⁷⁷ Like the proposed amendments to Rules 13a-10 and 15d-10, proposed new Rule 30b1-3 would specify that no filing fee would be required for a transition report.

Comment is requested on the proposed new Rule and, in particular, whether the Commission should specify the period the transition report must cover and, if so, what that period should be.⁷⁸

⁷⁴ See proposed Rules 13a-10(g) and 15d-10(g).

⁷⁵ See proposed new Investment Company Act Rule 30b1-3. Investment companies electing to be regulated as business development companies must comply with the Exchange Act periodic reporting requirements applicable to entities other than investment companies, including the filing of forms 10-K and 10-Q. Accordingly, such companies would be subject to the provisions of Exchange Act Rules 13a-10 and 15d-10 rather than proposed new Investment Company Act Rule 30b1-3.

⁷⁶ Investment companies filing Form N-SAR must do so within 60 days of the end of the reporting period. See Rule 30b1-1.

⁷⁷ A management investment company making a determination on January 15 to change its fiscal year end from December 31 to February 28 could not file a report for the period from July 1 to February 28 because the period would be longer than six months. Rather, the investment company would file a report, no later than 60 days after January 15, either (1) covering the transition period beginning July 1 and ending August 31 or (2) covering the period from July 1 to December 31, and then file, no later than 60 days after February 28, a report for the transition period from January 1 to February 28.

⁷⁸ In addition, the Commission is proposing technical amendments to Rules 8b-16 [17 CFR 270.8b-16] and 30b1-2 [17 CFR 270.30b1-2], and Form N-SAR under the Investment Company Act to correct erroneous references to Rule 30b1-3. The references should be to Rule 30b1-1 which, until 1985, was designated as rule 30b1-3. See Release No. 33-6591 (July 1, 1985) [50 FR 27940].

⁶⁸ See discussion of the provisions on changing a fiscal year after the end of that particular year at II.A.2.b., *supra*.

⁶⁹ 17 CFR 240.13a-1.

⁷⁰ 17 CFR 240.15d-1.

⁷¹ See proposed Rules 13a-10(h) and 15d-10(h).

⁷² See proposed Rule 12b-25(a) and (b)(2)(ii).

⁷³ See Rules 30a-1 and 30b-1 under the Investment Company Act [17 CFR 270.30a-1 and 270.30b1-1]. Form N-SAR is filed under both the Exchange Act and the Investment Company Act.

⁶⁷ See General Instruction G(b) of Form 20-F specifying that an annual report on Form 20-F shall include the information specified in Parts I, III and IV of the Form.

3. Other Proposed Financial Reporting Changes.—a. Amendments to the Accounting and Proxy Rules To Permit Reliance on Nine Month Statements.

Where an issuer has changed its fiscal year, the staff historically has accepted audited financial statements covering a period of nine to 12 months in satisfaction of various requirements for one year of financial statements.⁷⁹ Where there is a requirement for filing financial statements for a multiple year period, the filing of financial statements that include one period of nine to 12 months has been deemed to satisfy a filing requirement of one year, if for all other years in the time period financial statements covering the full years are provided.⁸⁰ The Commission is proposing to codify this practice by adding new Rule 3-06 to Regulation S-X. The proposed new Rule would apply to financial statements in proxy and information statements, registration statements and Exchange Act reports.⁸¹ A parallel provision would be added to the proxy rules in the form of a new Note 2 to Rule 14a-3(b)(1) to provide that separate audited financial statements covering a consecutive period of 33 months or more, including any transition periods, would fulfill the requirement for statements of income and cash flow for the three most recent fiscal years.⁸² However, registered investment companies would not be covered by the proposed new Rule and Note because they are subject to different reporting requirements.⁸³

⁷⁹ See Rule 3-05(b) of Regulation S-X [17 CFR 210.3-05(b)] and Rule 14a-3(b)(1) of the proxy rules. Rule 3-05(b) is referred to in Form 8-K under the Exchange Act and the Securities Act registration statement forms (except Form S-18 [17 CFR 239.28]).

⁸⁰ See Rules 3-02(a) [17 CFR 210.3-02(a)] and 3-05(b) of Regulation S-X, Rule 14a-3(b)(1) of the proxy rules, and Item 21(d) of Form S-18. The Securities Act registration statement forms (except Form S-18) and Exchange Act Forms 8-K, 10, and 10-K all require financial statements prepared in accordance with Regulation S-X.

⁸¹ Where there has been a significant acquisition by the issuer, proposed new Rule 3-06 also would permit the filing of financial statements of the company being acquired covering a period of nine to 12 months in satisfaction of a requirement for one year of financial statements, if the required financial statements for all other periods cover the full time span. In addition, under the proposals, the filing of financial statements covering a period of nine to 12 months would satisfy a requirement for one year of financial statements where the Commission so permits pursuant to Rule 3-13 of Regulation S-X [17 CFR 210.3-13].

⁸² This provision also would apply to information statements. See Rule 14c-3(a)(1) [17 CFR 240.14c-3(a)(1)], which requires that the information specified in Rules 14a-3(b)(1) through (b)(11) [17 CFR 240.14a-3(b)(1)-(11)] also be given to shareholders who receive information statements.

⁸³ See Rule 3-18 of Regulation S-X [17 CFR 210.3-18].

b. Amendment to Rule 3-12. An amendment to Rule 3-12 of Regulation S-X is being proposed to assure more timely financial statements of first-time issuers.⁸⁴ Currently, an issuer that was not a reporting company before filing a registration statement could change its fiscal year end and attempt to file and have declared effective a registration statement with financial statements up to 18 and one-half months old.⁸⁵ The proposed amendment, which would codify current staff practice, would specify that the most recent audited financial statements in a registration statement filed under the Securities Act or on Form 10 under the Exchange Act that relates to the securities of a non-reporting issuer may not be more than one year and 45 days old at the date of effectiveness of the registration statement. The proposed amendment would apply only to companies not yet in the Exchange Act reporting system because their financial and business history would not be available to investors and the marketplace. The proposed one year and 45 day cutoff for the age of non-reporting company financial statements would be consistent with those requirements of Rule 3-01 of Regulation S-X that limit the age of the financial statements in a registration statement of a company that previously has not been reporting pursuant to the requirements of the Exchange Act.⁸⁶

⁸⁴ See proposed new paragraph (d); current paragraphs (d) and (e) would be redesignated.

⁸⁵ Rule 3-01(b) of Regulation S-X [17 CFR 210.3-01(b)] permits specified registrants to use unaudited financial statements that are at least as current as the third fiscal quarter of the most recently completed fiscal year if their registration statement is filed within 45 days after the end of the most recent fiscal year. Thus, under the current rules, a first-time registrant under the Securities Act with a December 31, 1987 year end that changed its year end in 1988 to May 31, 1988 could file unaudited financial statements covering the transition period from January 1, 1988 through May 31, 1988 and unaudited financial statements covering the subsequent nine months ending February 28, 1989 in a registration statement and attempt to have that registration statement declared effective on July 14, 1989. The most recently audited financial statements in the registration statement would cover the year ending December 31, 1987.

⁸⁶ Rule 3-01(b) provides that the audited financial statements of the prior fiscal year may not be used more than 45 days after the end of the current fiscal year, unless the specified circumstances in Rule 3-01(c) [17 CFR 210.3-01(c)] exist, which include the requirement that the registrant be filing reports pursuant to section 13 [15 U.S.C. 78m] or 15(d). In addition, Rule 3-01(a) [17 CFR 210.3-01(a)] requires a registrant that has been in existence for less than one fiscal year to file audited financial statements within 135 days of the date of filing the registration statement.

B. Quarterly Reporting: First Report to be Filed on Form 10-Q. Current Rules 13a-13 and 15d-13 require that after an issuer's first registration statement becomes effective, reports be filed on Form 10-Q commencing with the first quarter ending after effectiveness. Because financial statements in a registration statement may be up to 134 days old when the registration statement becomes effective,⁸⁷ a registrant with a December 31 year end whose registration statement became effective on April 14, including financial statements as of December 31 of the prior year, would not be required to file a quarterly report for the quarter ending on March 31. Instead, the registrant would be required to file its first report on Form 10-Q for the quarter ending June 30.

The proposed amendments to these rules eliminate any such gap in the reporting period between the financial information included in a registration statement and the first report on Form 10-Q. Under the proposals, the registrant described above would be required to file a quarterly report for the quarter ending March 31.⁸⁸ The requirement to file quarterly reports would commence with the first fiscal quarter following the most recent fiscal year or full quarter for which financial statements were included in the registration statement.⁸⁹

As proposed, a first-time registrant would be required to file its first Form 10-Q the later of 45 days after the effectiveness of the registration statement, or the date on which such report would have been required to be filed if the issuer had been a reporting company as of its last fiscal quarter. Thus, the registrant described above would be required to file its first quarterly report for the quarter ending March 31 within 45 days after April 14, the date of effectiveness. As is currently the case, first-time registrants generally would be required to commence filing quarterly reports at the time specified, regardless of whether they have operations during this period.⁹⁰

⁸⁷ Rule 3-12(a) of Regulation S-X [17 CFR 210.3-12(a)].

⁸⁸ Cf. Rule 15d-2 [17 CFR 240.15d-2], which eliminates a similar reporting gap by requiring an issuer whose registration statement becomes effective after a fiscal year end without financial statements as of such fiscal year end in the prospectus to file a special report within 90 days of effectiveness on the form appropriate for annual reports of the registrant. The special report must include audited financial statements for the last full fiscal year.

⁸⁹ See proposed Rules 13a-13(a) and 15d-13(a).

⁹⁰ Generally, the staff has taken the position that registrants under the Securities Act whose

III. Request For Comments

Any interested persons wishing to submit written comments on the proposed amendments to Exchange Act Rules 12b-25, 13a-10, 13a-13, 14a-3, 15d-10, and 15d-13, Forms 8-K, 10-K, 10-Q, 20-F, and 12b-25, proposed new Investment Company Act Rule 30b1-3, the proposed amendments to Investment Company Act Rules 8b-16 and 30b1-2 and Form N-SAR, proposed new Rule 3-06 and the proposed amendment to Rule 3-12 of Regulation S-X, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.⁹¹

IV. Cost-Benefit Analysis

To evaluate the costs and benefits associated with the proposed amendments to Exchange Act Rules 12b-25, 13a-10, 14a-3, and 15d-10, Forms 8-K, 10-K, 10-Q, 20-F, and 12b-25, proposed new Investment Company Act Rule 30b1-3, the proposed amendments to Investment Company Act Rules 8b-16 and 30b1-2 and Form N-SAR, proposed new Rule 3-06 and the proposed amendment to Rule 3-12 of Regulation S-X, the Commission requests commentators to provide views and data as to the costs and benefits associated with these proposals.

The proposed amendments to Rules 13a-10 and 15d-10 would require that transition reports be filed for all transition periods, including those of less than three months. Currently, transition reports are not required for transition periods of less than three months, although separate audited financial statements must be filed to report on such transition periods with the issuer's next annual report. This change could result in some additional reporting costs to those issuers that change their fiscal year end by less than three months, although, in light of the

subsequent auditing requirement, such costs may not be significant.

On the other hand, the proposals would permit domestic issuers to file transition reports covering transition periods shorter than six months on the abbreviated reporting format of Form 10-Q. Foreign private issuers would use Form 20-F and respond only to certain specified items. As all transition reports currently are required to be filed on the more lengthy and comprehensive annual reporting forms, this change could result in substantial cost savings for those issuers that change their fiscal year end by three but less than six months.

The proposals also would require issuers to file a Form 8-K announcing a change in fiscal year end, which could impose some additional costs. However, the other proposals generally would codify current rule interpretations by the staff, which would provide specific guidance to issuers on the transition and quarterly reporting requirements and lessen administrative burdens on the Commission in responding to inquiries concerning such requirements. Further, the proposals would clarify and thereby provide certainty for the transition and quarterly reporting requirements when an issuer changes its fiscal year end.

The proposed new Rule under the Investment Company Act, which is tailored to an investment company's annual or semi-annual reporting obligations, would codify and clarify current practices and should not impose any new costs or obligations on investment companies.

The Commission also requests views and data as to the costs and benefits associated with amending Rules 13a-13 and 15d-13 to require a new registrant to file its first report on Form 10-Q for the first quarterly period other than the fourth quarter ending after the annual or quarterly period covered by the most recent financial statements included in its effective registration statement. This proposed revision would benefit investors by providing more timely and complete financial information about a first-time registrant for the period following the latest financial information in an effective registration statement.

V. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to Exchange Act Rules 12b-25, 13a-10, 13a-13, 14a-3, 15d-10, and 15d-13, Forms 8-K, 10-K, 10-Q, 20-F, and 12b-25, proposed new Investment Company Act Rule 30b1-3

and the proposed amendments to Investment Company Act Rules 8b-15 and 30b1-2 and Form N-SAR, proposed new Rule 3-06 and the proposed amendment to Rule 3-12 of Regulation S-X. The analysis notes that the proposed amendments are intended to update the rules concerning transition reporting, integrate them with the current periodic reporting system, codify staff rule interpretations and address issues concerning quarterly reporting raised repeatedly by registrants when changing their fiscal year end. The proposed amendments to the quarterly reporting rules are intended to eliminate a reporting gap by modifying the period for which a new registrant's first quarterly report must be filed.

The proposed amendments to Rules 13a-10 and 15d-10 may not result in any significant increase in reporting, recordkeeping or compliance requirements, although the Commission has solicited comment on the additional costs, if any, of reporting on transition periods of less than three months, given the requirement that audited information covering such periods be filed with the issuer's next annual report. These proposed amendments may result in a significant decrease in reporting, recordkeeping or compliance requirements for those issuers that change their fiscal year end by three but less than six months. The proposed amendments to Form 8-K and to Rules 13a-13 and 15d-13 may result in additional reporting requirements for some issuers. However, the other proposed amendments would neither increase nor decrease reporting, recordkeeping or compliance requirements.

The following significant alternatives were considered: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities. Such alternatives, however, were found not to be consistent with the goals of the Exchange Act as it relates to the protection of investors. A copy of the analysis may be obtained by contacting Barbara J. Green, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

registration statements are declared effective shortly before the end of their fiscal year, thereby creating Exchange Act reporting requirements pursuant to section 15(d), are required to file annual and quarterly reports even where the registrant has not commenced operations; for example, where the registrant is in the process of a best efforts offering and has not yet met the minimum, or where an acquisition by the registrant has not yet been completed pending regulatory approval.

⁹¹ 15 U.S.C. 78w(a).

VI. Appendix

1. Examples of Reporting Under the Rule
Proposals for a Domestic Issuer with a Dec.
31 Year End that Files Periodic Reports
Pursuant to Section 13 or 15(d) of the
Exchange Act

a. *Decision made early in year to change
year end to date already past with resulting
transition period shorter than six months:*

On March 1, 1988 the issuer decides to
change year end to Jan. 31, 1988
—15 days after March 1, 1988 would file an
8-K
—90 days after Dec. 31, 1987 would file a
10-K covering full year from Jan. 1, 1987
through Dec. 31, 1987
—45 days after March 1, 1988 would file a
transition report on Form 10-Q covering
the transition period from Jan. 1, 1988
through Jan. 31, 1988
—45 days after April 30, 1988 would file a
10-Q covering the first quarter ending
April 30, 1988 of the new fiscal year, with
regular timing of quarterly and annual
reporting continuing thereafter; the 10-K
covering the full year from Feb. 1, 1988
through Jan. 31, 1989 would include
audited financial statements for the
month of January 1988

b. *Decision made early in year to change
year end to future date with resulting
transition period shorter than six months:*

On Feb. 1, 1988 the issuer decides to change
year end to May 31, 1988
—15 days after Feb. 1, 1988 would file an 8-
K
—90 days after Dec. 31, 1987 would file a
10-K covering full year from Jan. 1, 1987
through Dec. 31, 1987
—Either 45 days after Feb. 29, 1988 would
file a 10-Q covering the period ending
Feb. 29, 1988 coinciding with a quarter of
the new fiscal year or 45 days after
March 31, 1988 would file a 10-Q
covering the quarter ending March 31,
1988 of the old fiscal year
—45 days after May 31, 1988 would file a
transition report on Form 10-Q covering
the transition period from Jan. 1, 1988
through May 31, 1988
—45 days after Aug. 31, 1988, would file a
10-Q covering the first quarter ending
Aug. 31, 1988 of the new fiscal year, with
regular timing of quarterly and annual
reporting continuing thereafter; the 10-K
covering the full year from June 1, 1988
through May 31, 1989 would include
audited financial statements for Jan. 1,
1988 through May 31, 1988

c. *Decision made early in year to change
year end to future date with resulting
transition period six months or longer:*

On Feb. 1, 1988 the issuer decides to change
year end to Sept. 30, 1988
—15 days after Feb. 1, 1988 would file an 8-
K
—90 days after Dec. 31, 1987 would file a
10-K covering full year from Jan. 1, 1987
through Dec. 31, 1987
—45 days after March 31, 1988 and June 30,
1988 would file 10-Qs covering the
quarters ending March 31, 1988 and June
30, 1988, respectively
—90 days after Sept. 30, 1988 would file a
transition report on Form 10-K covering

the transition period from Jan. 1, 1988
through Sept. 30, 1988

—45 days after Dec. 31, 1988, would file a
10-Q covering the first quarter ending
Dec. 31, 1988 of the new fiscal year, with
regular timing of quarterly and annual
reporting continuing thereafter

d. *Decision made late in year to change
year end to date already past with resulting
transition period shorter than six months*

On Nov. 1, 1988 the issuer decides to change
year end to Jan. 31, 1988
—45 days after Sept. 30, 1988 would file a
10-Q covering the quarter ending Sept.
30, 1988 of the old fiscal year
—15 days after Nov. 1, 1988 would file an
8-K
—45 days after Nov. 1, 1988 would file a
transition report on Form 10-Q covering
the transition period from Jan. 1, 1988
through Jan. 31, 1988
—90 days after Jan. 31, 1989 would file a 10-
K covering full year from Feb. 1, 1988
through Jan. 31, 1989, with regular timing
of quarterly and annual reporting
continuing thereafter; the 10-K would
include audited financial statements for
January 1988

e. *Decision made late in year to change
year end to date already past with resulting
transition period six months or longer:*

On Nov. 1, 1988 the issuer decides to change
year end to Sept. 30, 1988
—15 days after Nov. 1, 1988 would file an
8-K
—90 days after Nov. 1, 1988 would file a
transition report on Form 10-K covering
the transition period from Jan. 1, 1988
through Sept. 30, 1988
—45 days after Dec. 31, 1988 would file a
10-Q covering the first quarter ending
Dec. 31, 1988 of the new fiscal year, with
regular timing of quarterly and annual
reporting continuing thereafter

2. Examples of Reporting Under the Rule
Proposals for a Management Investment
Company Issuer With a December 31 Year
End That Changes its Fiscal Year

a. On Feb. 1, 1988 decides to change year end
to April 30

—60 days after April 30 would file Form N-
SAR covering the period from Jan. 1 to
April 30

b. On Feb. 1, 1988 decides to change year end
to Sept. 30

—60 days after March 31 would file Form
N-SAR covering the period from Jan. 1 to
March 31

c. On April 1, 1988 decides to change year
end to Jan. 31

—60 days after April 1 would file Form N-
SAR covering the period from Jan. 1 to
Jan. 31

d. On Oct. 1, 1988 decides to change the year
end to Nov. 30

—60 days after Nov. 30 would file Form N-
SAR covering the period from July 1 to
Nov. 30

e. On Nov. 1, 1988 decides to change the year
end to Jan. 31

—60 days after Nov. 1 would file Form N-
SAR covering the period from July 1 to
July 31

f. On Nov. 1, 1988 decides to change the year
end to Sept. 30

—60 days after Nov. 1 would file Form N-
SAR covering the period from July 1 to
Sept. 30

VII. Statutory Basis

The amendments are being proposed
pursuant to Sections 7 and 19(a) of the
Securities Act of 1933, Sections 13, 14,
15(d) and 23(a) of the Securities
Exchange Act of 1934, and Sections 8,
30, and 38 of the Investment Company
Act of 1940.

List of Subjects in CFR Parts 210, 240,
249, 270 and 274

Reporting and recordkeeping
requirements, Securities.

VIII. Text of Proposed Amendments

In accordance with the foregoing, Title
17, Chapter II of the Code of Federal
Regulations is proposed to be amended as
follows:

**PART 210—FORM AND CONTENT OF
AND REQUIREMENTS FOR FINANCIAL
STATEMENTS, SECURITIES ACT OF
1933, SECURITIES EXCHANGE ACT OF
1934, PUBLIC UTILITY HOLDING
COMPANY ACT OF 1935, INVESTMENT
COMPANY ACT OF 1940, AND
ENERGY POLICY AND
CONSERVATION ACT OF 1975**

1. The authority citation for Part 210
continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19 and Schedule
A of the Securities Act of 1933 (15 U.S.C. 77f,
77g, 77h, 77j, 77s, 77aa(25)(26)) * * *

2. By adding new § 210.3-06 to read as
follows:

**§ 210.3-06 Financial statements covering
a period of nine to twelve months.**

Except with respect to registered
investment companies, the filing of
financial statements covering a period of
nine to 12 months shall be deemed to
satisfy a requirement for filing financial
statements for a period of one year
where:

(a) The issuer has changed its fiscal
year;

(b) The issuer has made a significant
business acquisition for which financial
statements are required under § 210.3-05
of this chapter and the financial
statements covering the interim period
pertain to the business being acquired;
or

(c) The Commission so permits
pursuant to § 210.3-13 of this chapter.
Where there is a requirement for filing
financial statements for a time period
exceeding one year but not exceeding
three consecutive years (with not more
than 12 months included in any period
reported upon), the filing of financial
statements covering a period of nine to

12 months shall satisfy a filing requirement of financial statements for one year of that time period only if the conditions described in either paragraph (a), (b), or (c) of this section exist and financial statements are filed that cover the full fiscal year or years for all other years in the time period.

3. By amending § 210.3-12 by redesignating current paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding new paragraph (d) to read as follows:

§ 210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

(d) The age of the most recent audited financial statements included in a registration statement filed under the Securities Act of 1933 or filed on Form 10 [17 CFR 249.210] under the Securities Exchange Act of 1934 shall not be more than one year and 45 days old at the date the registration statement becomes effective if the registration statement relates to the security of an issuer that was not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.12b-25 by revising paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 20-F, 11-K, N-SAR or 10-Q.

(a) If all or any required portion of an annual or transition report on Form 10-K, 20-F, 11-K or a quarterly or transition report on Form 10-Q required to be filed pursuant to section 13 or 15(d) of the Act and the rules thereunder or if all or any portion of a semi-annual, annual or transition report on Form N-SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(2) * * *

(ii) Either the subject annual report, semi-annual report or transition report on Form 10-K, 20-F or 11-K, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report or transition report on Form 10-Q, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

3. By revising § 240.13a-10 to read as follows:

§ 240.13a-10 Transition reports.

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening date of its new fiscal year; *Provided, however*, That an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) If the transition period covers a period of six or more months, a report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards.

(c) If the transition period covers a period of less than six months, a report pursuant to this section shall be filed for the transition period not more than 45

days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on Form 10-Q (§ 249.308a of this chapter), shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period need not be filed in the annual report, if the audited balance sheet as of the end of the fiscal year prior to the transition period is filed.

(d) Every issuer that changes its fiscal year end shall:

(1) File a quarterly report on Form 10-Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10-Q (§ 249.308a of this chapter) within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10-Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year; and

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end.

Note to paragraphs (c) and (d): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10-Q or a quarterly report for the newly adopted

fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(e) Every successor issuer with securities registered under Section 12 of this Act that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. If the transition period covers a period of six or more months, the report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than 30 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, the report shall be filed for the transition period on Form 10-Q (§ 249.308a of this chapter) not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section.

(f)(1) Paragraphs (a) through (e) of this section shall not apply to foreign private issuers authorized to use Form 20-F (§ 249.220f of this chapter) for annual reports required by Rule 13a-1 (§ 240.13a-1) of this chapter).

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) If the transition period covers a period of six or more months, the report for the transition period shall be filed on Form 20-F responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of less than six months, the report for the transition period shall be filed on Form 20-F responding to Items 3, 9, 15, 16, and 17 or 18. Such report shall be filed within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by either Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S-X (§ 210.10-01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period.

(g) The provisions of this rule shall not apply to investment companies required to file reports pursuant to Rule 30b1-1 (§ 270.30b1-1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(h) No filing fee shall be required for a transition report filed pursuant to this section.

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer authorized to use Form 20-F for annual reports required by Rule 13a-1 or an investment company required to file reports pursuant to Rule 30b1-1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8-K responding to Item 8 thereof within the period specified in General Instruction B.2. to that form.

4. By amending § 240.13a-13 by revising paragraph (a) to read as follows:

§ 240.13a-13 Quarterly Reports on Form 10-Q (§ 249.308a of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to Section 12 of the Act and is required to file annual reports pursuant to Section 13 of the Act on Form 10-K (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter) shall file a quarterly report on Form 10-Q (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal

year end meeting the requirements of Article 10 of Regulation S-X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10-Q as of its last fiscal year, whichever is later.

5. By amendment § 240.14a-3 by redesignating the Note to paragraph (b)(1) as Note 1 and adding Note 2 to paragraph (b)(1) to read as follows:

§ 240.14a-3 Information to be furnished to security holders.

(b) * * *
(1) * * *

Note 2: For purposes of complying with § 240.14a-3, if the registrant, other than a registered investment company, has changed its fiscal closing date, financial statements for period that covers a consecutive time span of 33 months or more (not more than 12 months included in any period reported upon) will be deemed to satisfy the requirements for statements of income and cash flow for the three most recent fiscal years.

6. By revising § 240.15d-10 to read as follows:

§ 240.15d-10 Transition reports.

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening date of its new fiscal year; *Provided, however,* that an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) If the transition period covers a period of six or more months, a report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited.

Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards.

(c) If the transition period covers a period of less than six months, a report pursuant to this section shall be filed for the transition period not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on Form 10-Q (§ 249.308a of this chapter), shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period need not be filed in the annual report, if the audited balance sheet as of the end of the fiscal year prior to the transition period is filed.

(d) Every issuer that changes its fiscal year end shall:

(1) File a quarterly report on Form 10-Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10-Q (§ 249.308a of this chapter) within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal

year within the transition period, the issuer may file a quarterly report on Form 10-Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year; and

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end.

Note of paragraphs (c) and (d): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10-Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding period of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year the most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, as assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(e) Every successor issuer that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. If the transition period covers a period of six or more months, the report shall be filed for the transition period of the form appropriate for annual reports of the issuer not more than 90 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, the report shall be filed for the transition period on Form 10-Q (§ 249.308a of this chapter) not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section.

(f)(1) Paragraph (a) through (e) of this section shall not apply to foreign private issuers authorized to use Form 20-F (§ 249.220f of this chapter) of this chapter for annual reports required by Rule 15d-1 (§ 240.15d-1 of this chapter.)

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year end and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) If the transition period covers a period of six or more months, the report for the transition period shall be filed on Form 20-F responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of less than six months, the report for the transition period shall be filed on Form 20-F responding to Items 3, 9, 15, 16, and 17 or 18. Such report shall be filed within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S-X (§ 210.10-01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flow covering the transition period.

(g) The provisions of this Rule shall not apply to investment companies required to file reports pursuant to Rule 30b1-1 (§ 270.30b1-1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(h) No filing fee shall be required for a transition report filed pursuant to this section.

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer authorized to use Form 20-F for annual reports required by Rule 15d-1 or an investment company required to file reports pursuant to Rule 30b1-1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8-K responding to Item 8 thereof within the period specified in General Instruction B.2. to that form.

7. By amending § 240.15d-13 by revising paragraph (a) to read as follows:

§ 240.15d-13 Quarterly reports on Form 10-Q (§ 249.308a of this Chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to the Securities Act of 1933 and is required to file annual reports pursuant to Section 15(d) of the Securities Exchange Act of 1934 on Form 10-K (§ 249.310 of this chapter) or U.S. (§ 259.5s of this chapter) shall file a quarterly report on Form 10-Q (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S-X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10-Q as of its last fiscal quarter, whichever is later.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read, in part, as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*

2. By amending § 249.220f by revising the section heading and paragraphs (a) and (b), and adding a new paragraph (d) as set forth below.

Form 20-F is amended by revising the cover sheet above the line beginning with the words "Commission file number" and revising paragraphs (a) and (b) of, and adding a new paragraph (d) to General Instruction A as set forth below.

Note: The text of Form 20-F does not appear in the Code of Federal Regulations.

§ 249.220f Form 20-F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any non-Canadian foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act (the

"Exchange Act"), or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) A Canadian foreign private issuer may use this form as a registration statement under section 12(g) of the Exchange Act or as an annual or transition report under section 13(a) for a class of securities registered under section 12(g) only if such issuer does not have or has not had during the 12 months prior to the filing of the registration statement or annual or transition report any class of securities registered under section 12(b) of the Exchange Act or a reporting obligation (suspended or active) under section 15(d) of the Exchange Act and if such issuer has not issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10-K (§ 240.310 of this chapter).

(d) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a-10 or § 240.15d-10 applicable when the issuer changes its fiscal year end.

Form 20-F

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934 [FEE REQUIRED]

OR

☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [FEE REQUIRED]

For the fiscal year ended _____

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

For the transition period from _____

General Instructions**A. Rule as to Use of Form 20-F.**

(a) Any non-Canadian foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) A Canadian foreign private issuer may use this form as a registration statement under section 12(g) of the Exchange Act and as an annual or transition report under section 13(a) for a class of securities registered under section 12(g) only if such issuer does not have or has not had during the 12 months prior to the filing of the registration statement or annual or transition report any class of securities registered under section 12(b) of the Exchange Act or a

reporting obligation (suspended or active) under section 15(d) of the Exchange Act and if such issuer has not issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10-K (§ 249.310 of this chapter).

(d) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a-10 or § 240.15d-10 applicable when the issuer changes its fiscal year end.

3. By amending Form 8-K (§ 249.308) by renumbering current instructions B.2. through B.4. as B.3. through B.5. to the General Instructions to Form 8-K, adding a new instruction B.2., and adding new Item 8 as set forth below.

Note: The text of Form 8-K does not appear in the Code of Federal Regulations.

§ 249.308 Form 8-K, for current reports.**Form 8-K****General Instructions****B. Events to be Reported and Time for Filing of Reports**

1. A report on this form pursuant to Item 8 is required to be filed within 15 days after the date on which the registrant makes the determination to use a fiscal year end different from that used in its most recent filing with the Commission.

Item 8. Change in Fiscal Year.

If the registrant determines to change the fiscal year from that used in its most recent filing with the Commission, the date of such determination and the date of the new fiscal year end shall be reported.

4. By amending § 249.308a by revising the section heading, the second sentence and adding two new sentences after the second sentence as set forth below.

Form 10-Q is amended by revising General Instructions A.1. and A.2. and revising the cover sheet above the line beginning with the words "Commission file number" as set forth below.

Note: The text of Form 10-Q does not appear in the Code of Federal Regulations.

§ 249.308a Form 10-Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

A quarterly report on this form pursuant to § 240.13a-13 or § 240.15d-13 of this chapter shall be filed within 45

days after the end of the first three fiscal quarters of each fiscal year, but no quarterly report need be filed for the fourth quarter of any fiscal year. Form 10-Q also shall be used for transition and quarterly reports required to be filed pursuant to § 240.13a-10 or § 240.15d-10 of this chapter. Such transition or quarterly reports shall be filed in accordance with the requirements set forth in § 240.13a-10 or § 240.15d-10 applicable when the registrant changes its fiscal year end.

FORM 10-Q

General Instructions

A. Rule as to Use of Form 10-Q.

1. Form 10-Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a-13 (17 CFR 240.13a-13) or Rule 15d-13 (17 CFR 240.15d-13). A quarterly report on this form pursuant to Rule 13a-13 or Rule 15d-13 shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

2. Form 10-Q also shall be used for transition and quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a-10 (17 CFR 240.13a-10) or Rule 15d-10 (17 CFR 240.15d-10). Such transition or quarterly reports shall be filed in accordance with the requirements set forth in Rule 13a-10 or Rule 15d-10 applicable when the registrant changes its fiscal year end.

FORM 10-K

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

☐ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended _____

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

5. By amending § 249.310 by revising the section heading and the text of the section, except for the first and last sentences as set forth below.

For 10-K is amended by revising General Instruction A, except for the first and last sentences, and the cover sheet above the line designated for the "Exact name of the registrant as specified in its charter" as set forth below.

Note: The text of Form 10-K does not appear in the Code of Federal Regulations.

§ 249.310 Form 10-K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

*** This form also shall be used for transition reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a-10 or § 240.15d-10 applicable when the registrant changes its fiscal year end. However, all schedules required by Article 12 of Regulation S-X may, at the option of the registrant, be filed as an amendment to the annual or transition report not later than 120 days after the end of the fiscal year covered by the report.***

FORM 10-K

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10-K.

*** This Form also shall be used for transition reports pursuant to section 13 or 15(d) of the Act. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a-10 and § 240.15d-10 applicable when the registrant changes its fiscal year end. However, all schedules required by Article 12 of Regulation S-X may, at the option of the registrant, be filed as an amendment to the annual or transition report not later than 120 days after the end of the fiscal year covered by the report.***

FORM 10-K

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [FEE REQUIRED]

For the fiscal year ended _____

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

For the transition period from _____ to _____

Commission file number _____

6. By amending § 249.322 by revising the first sentence as set forth below. Form 12b-25 is amended by revising the cover sheet above the line reading "Read Attached Instruction Sheet Before Preparing Form. Please Print or Type," paragraph (b) of Part II, and the first sentence of Part III as set forth below.

Note: The text of Form 12b-25 does not appear in the Code of Federal Regulations.

§ 249.322 Form 12b-25, notification of late filing.

This form shall be filed pursuant to § 240.12b-25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10-K, 20-F, or 11-K or a quarterly or transition report on Form 10-Q required by Section 13 or 15(d) of the Act or a semi-annual, annual or transition report on Form N-SAR required by section 30 of the Investment Company Act of 1940.***

FORM 12b-25

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

NOTIFICATION OF LATE FILING

(Check One)

☐ Form 10-K ☐ Form 11-K ☐ Form 20-F ☐ Form 10-Q

☐ Form N-SAR

For Period Ended: _____

☐ Transition Report on Form 10-K

☐ Transition Report on Form 20-F

☐ Transition Report on Form 10-Q

☐ Transition Report on Form N-SAR

For the Transition Period Ended: _____

Part II—Rules 12b-25 (b) and (c)

(a)***

(b) The subject annual report, semi-annual report, transition report on Form 10-K or Form 20-F, or portion thereof will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10-Q, or portion thereof will be filed on or before the fifth calendar day following the prescribed due date; and

PART III—Narrative

State below in reasonable detail the reasons why Form 10-K, 11-K, 20-F, 10-Q, N-SAR, or the transition report or portion thereof could not be filed within the prescribed period.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89; the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1, et seq.***

2. By revising § 270.8b-16 to read as follows:

§ 270.8b-16 Amendments to registration statement.

Every registered management investment company which is required to file a semi-annual report on Form N-SAR, as prescribed by rule 30b1-1 [17 CFR 270.30b1-1], shall amend the registration statement required pursuant to Section 8(b) by filing, not more than 120 days after the close of each fiscal year ending on or after the date upon which such registration statement was filed, the appropriate form prescribed for such amendments.

3. By revising § 270.30b1-2 to read as follows:

§ 270.30b1-2 Semi-annual report for totally-owned registered management investment company subsidiary of registered management investment company.

Notwithstanding the provisions of rules 30a-1 and 30b1-1, a registered investment company that is a totally-owned subsidiary of a registered management investment company need not file a semi-annual report on Form N-SAR if financial information with respect to that subsidiary is reported in the parent's semi-annual report on Form N-SAR.

4. By adding § 270.30b1-3 to read as follows:

§ 270.30b1-3 Transition reports.

Every registered investment company filing reports on Form N-SAR that changes its fiscal year end shall file a report on Form N-SAR not more than 60 calendar days after the later of either the close of the transition period or the date of the determination to change the fiscal year. In the case of a management investment company, the transition report shall not cover a period longer than six months; in the case of a unit investment trust, the transition report shall not cover a period longer than 12 months. No filing fee shall be required for a transition report filed pursuant to this rule.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.* * * *

2. By revising § 274.101 to read as follows:

§ 274.101 Form N-SAR, semi-annual report of registered investment companies.

This form shall be used by registered investment companies for semi-annual or annual reports to be filed pursuant to rule 30a-1 [17 CFR 270.30a-1] or 30b1-1

[17 CFR 270.30b1-1] in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder (same as § 249.300 of this chapter).

By the Commission,
June 2, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-12975 Filed 6-8-88; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Social Security Administration****20 CFR Parts 404 and 416**

[Regulations Nos. 4 and 16]

Consideration of Vocational Factors

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulation reflect longstanding policies followed by the Social Security Administration in making disability determinations and remove an ambiguity which exists in the present regulations regarding the factors that are considered when it is determined that a claimant is not disabled because he or she is able to do his or her past work. These proposed regulations do not reflect a substantive change in policy; they are intended only to clarify the longstanding agency implementation of the provisions of the Social Security Act (the Act) and their legislative history relating to disability determinations.

DATES: To be sure that your comments are considered, we must receive them no later than August 8, 1988.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by

making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act provide that an individual shall be determined to be under a disability * * * only if his * * * impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *. This statutory language contemplates consideration of a claimant's vocational factors of age, education, and work experience only in connection with the inquiry into the claimant's ability to do other work, not the kind of work done in the past.

In adjudicating a claim for benefits based on disability, we use a five step sequential evaluation process set out at §§ 404.1520 and 416.920. At step four of this process, if the claim has not been allowed or denied under one of the first three steps, we determine whether the claimant is able to do the work he or she did in the past. If the claimant can do work he or she did in the past, the claimant is not disabled. If he or she cannot do that past work, we must then decide at the fifth and final step whether, considering the claimant's age, education, and work experience, the claimant can perform other work which exists in the national economy.

In various sections throughout 20 CFR Part 404, Subpart P, including Appendix 2 to that Subpart and Part 416, Subpart I, and in Social Security Rulings (SSRs), our policy is consistently stated that the vocational factors of age, education, and work experience are considered only in determining whether a claimant is capable of doing any work other than that he or she did in the past.

Although section 223(d)(2)(A) and 1614(a)(3)(B) of the Act and the regulations we have promulgated to reflect these provisions contemplate consideration of the vocational factors only in connection with the inquiry we make a step five of the sequential evaluation process into the ability of the claimant to do other work, §§ 404.1560 and 416.960 do not state this longstanding interpretation of the statute with sufficient clarity. The existing ambiguity in these regulatory provisions was recently pointed out in

Velazquez v. Heckler, 802 F. 2d 680 (3d Cir. 1986). To remove this ambiguity, we propose to amend these two provisions to state, pursuant to our longstanding implementation of these provisions of the Act and their legislative history, that the vocational factors of age, education, and work experience are not considered in determining whether a claimant is able to do his or her past relevant work.

These proposed changes emphasize at what step in the sequential evaluation process the vocational factors of age, education, and work experience are considered. The current regulations §§ 404.1560 and 416.960 are being clarified to emphasize that consideration of whether a person can do past relevant work involves only the comparison of residual functional capacity with the physical and mental demands of that work and does not involve consideration of vocational factors.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. SSA estimates these changes will have little or no impact on title II or title XVI benefit payments or administrative costs. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only disability claimants and beneficiaries under title II and title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget. All information necessary to make the disability decisions discussed in these regulations is presently collected using forms which have the Office of Management and Budget's clearance.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: December 2, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 1, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

20 CFR Part 404, Subpart P, is amended as follows:

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)-(h), 216(i), 221(a) and (i), 222(c), 223, 225 and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b) and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425 and 1302; sec. 505(a) of Pub. L. 96-265; 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1560 is revised to read as follows:

§ 404.1560 When your vocational background will be considered.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, a child's insurance benefits based on disability before age 22 and we cannot decide whether you are disabled on medical evidence alone, we will consider your residual functional capacity together with your vocational background.

(b) *Past Relevant Work.* We will first compare your residual functional capacity with the physical and mental demands of the kind of work you have done in the past. If you still have the residual functional capacity to do your past relevant work, we will find that you can still do your past work, and we will determine that you are not disabled, without considering your vocational

factors of age, education, and work experience.

(c) *Other Work.* If we find that you can no longer do the work you have done in the past, we will then consider your residual functional capacity together with your vocational factors of age, education, and work experience to determine whether you can do other work (jobs) that exists in significant numbers in the national economy.

PART 416—SUPPLEMENTARY SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, are amended as set forth below.

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.960 is revised to read as follows:

§ 416.960 When your vocational background will be considered.

(a) *General.* If you are age 18 or older and applying for benefits based on disability and we cannot decide whether you are disabled on medical evidence alone, we will consider your residual functional capacity together with your vocational background.

(b) *Past Relevant Work.* We will first compare your residual functional capacity with the physical and mental demands of the kind of work you have done in the past. If you still have the residual functional capacity to do your past relevant work, we will find that you can still do your past work, and we will determine that you are not disabled, without considering your vocational factors of age, education, and work experience.

(c) *Other Work.* If we find that you can no longer do the work you have done in the past, we will then consider your residual functional capacity together with your vocational factors of age, education, and work experience to determine whether you can do other work (jobs) that exists in significant numbers in the national economy.

[FR Doc. 88-12996 Filed 6-8-88; 8:45 am]

BILLING CODE 5190-11-M

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Reduction Because of Entitlement to Other Benefits**AGENCY:** Social Security Administration, HHS.**ACTION:** Proposed rule.

SUMMARY: The Social Security Administration proposes to amend its regulations in the case of a deceased insured individual who is simultaneously entitled to retirement and disability benefits. Specifically, this proposed regulation delineates those persons who may elect the type of benefit that will be the basis for monthly payments due to the insured before the insured's death.

DATES: To be sure that your comments are considered, we must receive them no later than August 8, 1988.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 594-7459.

SUPPLEMENTARY INFORMATION:**Background**

Section 404.407(c) of the regulations provides that in cases of simultaneous entitlement to retirement and disability insurance benefits (RIB/DIB), the insured individual will receive the larger benefit unless he or she elects to receive the smaller. An insured individual age 62 to 65 may be entitled to a higher benefit if he or she receives the DIB. However, because of the way the maximum family benefits are computed, the auxiliaries who are entitled on the record may share a smaller maximum family benefit. Thus, an individual entitled to both RIB and DIB may elect the smaller of the two benefits in order to maximize total family benefits.

Generally, an individual must be alive

when an application for benefits is filed. However, in the case of a deceased insured individual, an application for DIB may be filed by someone other than the insured individual within 3 months after the month of the insured individual's death. In this regard, the regulations at § 404.612(d) provide that a person qualified to receive benefits due the deceased can file an application for DIB after the death of the insured individual. However, strict interpretation had been made of § 404.407(c) so that no one other than the insured individual (or proper applicant on behalf of a living insured individual) could make the election described in § 404.407(c). This can result in an overpayment if the insured individual was entitled to RIB during his or her lifetime, but died before his or her DIB claim was filed or adjudicated. Under current policy, overpayments in family maximum cases are created because even though the DIB monthly benefit is higher than the RIB monthly benefit, the RIB family maximum is higher than the DIB family maximum. The regulations do not currently provide for anyone other than the insured individual to exercise the § 404.407(c) election. A favorable adjudication of a DIB claim subsequent to the death of an insured individual who was receiving RIB payments could result in an overpayment for the period during which the insured was simultaneously entitled to both benefits. An overpayment can occur if the family maximum is lowered as a result of the DIB and no one is authorized to elect the RIB on behalf of the deceased insured.

Proposed Change

We propose to amend § 404.407(c) to state that a person defined in § 404.612(a) (if the claimant is competent), (c) (if the claimant is incompetent), or (d) (if the insured individual is deceased) may make the election described in § 404.407(c).

Regulatory Procedures**Executive Order 12291**

The Secretary has determined that this is not a major rule under Executive Order 12291 because there will be no significant costs in implementing these proposed regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations do not impose any new recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, Disability Insurance.

Dated: February 12, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 6, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart E of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. In § 404.407 paragraph (c) is revised to read as follows:

§ 404.407 Reduction because of entitlement to other benefits.

* * * * *

(c) *Entitlement to old-age insurance benefit and disability insurance benefit.* Any individual who is entitled for any month after August 1965 to both an old-age insurance benefit and a disability insurance benefit shall be entitled to only the larger of such benefits for such month, except that where the individual so elects, he or she shall instead be entitled to only the smaller of such benefits for such month. Only a person defined in § 404.612(a), (c), or (d) may make the above described election.

* * * * *

[FR Doc. 88-12997 Filed 6-8-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[LR-3-87]****Income Taxes; Exclusion From Gross Income of Qualified Scholarships****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exclusion from gross income of qualified scholarships. Changes to the applicable law were made by the Tax Reform Act of 1986. These regulations would provide necessary guidance to Internal Revenue Service personnel who administer the Internal Revenue Code and members of the public who are subject to these laws.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 8, 1988. These amendments are proposed to be generally effective for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-3-87) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:LR:T) (202-566-3287) (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 117 and 6041 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations under section 117 and section 6041 to the changes made by section 123(a) of the Tax Reform Act of 1986 (1986 Act) (Pub. L. 99-514, 100 Stat. 2112).

In General

The 1986 Act amended section 117 of the Code, relating to the exclusion from gross income of scholarships or fellowship grants. Section 117(a) provides that gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(ii). An individual who

is not a candidate for a degree must include in gross income any amount received as a scholarship or fellowship grant. Proposed § 1.117-6(c)(4) defines the term candidate for a degree. Proposed § 1.117-6(c)(1) provides that a qualified scholarship is any amount received by an individual as a scholarship or fellowship grant and used for qualified tuition and related expenses. As defined in proposed § 1.117-6(c)(2), qualified tuition and related expenses are tuition and fees required for enrollment or attendance at an educational organization, and fees, books, supplies, and equipment required for courses of instruction. Qualified tuition and related expenses do not include any amount received as a scholarship or fellowship grant and used for room and board or incidental expenses such as travel, research, or clerical help. Thus, any such amount is not excludable from gross income.

Under proposed § 1.117-6(h), any amount of a scholarship or fellowship grant in excess of the amount permitted to be excluded from gross income under proposed § 1.117-6(b) is considered earned income for purposes of section 63(c)(5) (relating to the standard deduction for dependents) and section 6012(a)(1)(C)(i) (relating to dependents required to make returns of income).

Section 117(d) provides that gross income does not include any amount received as a qualified tuition reduction. This document does not provide proposed regulations with respect to section 117(b). Proposed regulations addressing matters relating to section 117(d) are expected to be provided by another regulations project.

Scholarships Representing Payment for Services

The general rule providing for an exclusion from gross income of qualified scholarships is limited under section 117(c) to qualified scholarship amounts that do not represent payment for teaching, research, or other services by the recipient required as a condition to receiving the qualified scholarship. Section 117(c) also applies to qualified tuition reductions (as defined under section 117(d)).

Under proposed § 1.117-6(d)(1), that portion of a scholarship or fellowship grant that represents payment for services is included in gross income, regardless of whether such services are required of all candidates for the degree as a condition to receiving the degree.

Proposed § 1.117-6(d)(2) provides that a scholarship or fellowship grant represents payment for services when the grantor requires the recipient to perform services in return for the

granting of the scholarship or fellowship. A requirement that the recipient pursue studies, research, or other activities primarily for the benefit of the grantor is treated as a requirement to perform services. The granting of a scholarship or fellowship is considered to be in return for services whether such services are required to be performed before, concurrent with, or after receiving the scholarship or fellowship grant.

If only a portion of a scholarship or fellowship grant represents payment for services, the grantor must determine the amount of the scholarship or fellowship grant (including any reduction in tuition or related expenses) to be allocated to payment for services. Proposed § 1.117-6(d)(3) provides rules for determining what portion of the scholarship or fellowship grant must be allocated by the grantor to payment for services, and indicates some of the factors to be considered in making that allocation. If the recipient includes in gross income the amount allocated by the grantor to payment for services and such amount represents reasonable compensation for these services, then any additional amount of a scholarship or fellowship grant received from the same grantor that meets the requirements of proposed § 1.117-6(b) is excludable from gross income.

Effective Date Rules

Section 117, as amended by the 1986 Act, generally applies to taxable years beginning on or after January 1, 1987. However, under proposed § 1.117-6(f), section 117, as in effect prior to its amendment by the 1986 Act, continues to apply to a scholarship or fellowship granted before August 17, 1986, whenever received. In addition, section 117, as in effect prior to its amendment by the 1986 Act, applies in the case of a scholarship or fellowship granted after August 16, 1986, and before January 1, 1987, to the extent of any amount received prior to January 1, 1987, that is attributable to expenditures incurred before January 1, 1987.

For purposes of the effective date rules, proposed § 1.117-6(f)(2) provides that a scholarship or fellowship is granted when the grantor either notifies the recipient of the award or notifies an organization or institution acting on behalf of a specified recipient of the award to be provided to such recipient. If the notification is sent by mail, notification occurs as of the date the notice is postmarked. If evidence of a postmark does not exist, the date on the award letter is treated as the notification date.

Under proposed § 1.117-6(f)(3), a scholarship or fellowship is considered granted before August 17, 1986, to the extent that, in a notice of award made before that date, the grantor made a firm commitment to provide the recipient with a fixed cash amount or a readily determinable amount. For purposes of this section, a condition that the recipient remain in good standing or maintain a specific grade point average, or a requirement that the recipient show continuing financial need is not taken into account in determining whether the grantor made a firm commitment to provide the scholarship or fellowship grant for more than one academic period.

Under proposed § 1.117-6(f)(3)(i), amounts treated as a scholarship or fellowship granted before August 17, 1986, must be applied against qualified tuition and related expenses before any amount treated as a scholarship or fellowship granted after August 16, 1986, may be eligible for exclusion as a qualified scholarship.

In addition, proposed § 1.117-6(f)(3)(i) provides that if a scholarship or fellowship initially awarded before August 17, 1986, is granted for a period exceeding one academic period (for example, a semester), amounts received in subsequent academic periods are treated as granted before August 17, 1986, only if: (a) The amount awarded for the first academic period is described in the original notice of award as a fixed cash amount or readily determinable amount; (b) the original notice of award contains a firm commitment by the grantor to provide the scholarship or fellowship grant for more than one academic period; and (c) the recipient is not required to reapply to the grantor in order to receive the scholarship or fellowship grant in future academic periods.

Proposed § 1.117-6(f)(3)(ii) provides that amounts received in subsequent academic periods that were not initially described in the notice of award as either fixed cash amounts or readily determinable amounts are treated as granted before August 17, 1986, but only to the extent of the amount granted for the initial academic period.

Reporting and Withholding Requirements

Under proposed § 1.6041-3(q), unless a scholarship or fellowship grant represents payment for services by the recipient, neither the grantor nor the educational organization attended by the recipient is required to file a return of information with respect to such grant. However, there are reporting and withholding requirements for

scholarship or fellowship grants to nonresident aliens under section 1441 of the Code.

Under proposed § 1.117-6(d)(4), any amount of a scholarship or fellowship grant that represents payment for services is considered wages for purposes of section 3401(a). Therefore, such amounts are subject to section 3402 (relating to withholding for income taxes) and the grantor is subject to section 6051 (relating to reporting wages of employees) and is required to file Form W-2 with respect to scholarship or fellowship amounts representing payment for services. However, according to the rules set forth in sections 3121(b), 3306(c), and the regulations thereunder, the application of sections 3101 and 3111 (relating to the Federal Insurance Contributions Act (FICA)), or section 3301 (relating to the Federal Unemployment Tax Act (FUTA)) depends upon the nature of the employment and the status of the organization. When only a portion of a scholarship or fellowship grant represents payment for services, the grantor is subject to the reporting and withholding requirements only with respect to the portion that represents such payments.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded 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).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to 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*. 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 that persons submitting comments to OMB also send copies to those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Ruth Hoffman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.61-1 Through 1.261-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.6000-1 Through 1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.6041-3(q) also issued under 26 U.S.C. 6041(a).

Par. 2. A new § 1.117-0 is added to read as follows:

§ 1.117-0 Outline of regulations pertaining to scholarships and fellowship grants.

(a) Section 1.117-1—Exclusion of amounts received as a scholarship or fellowship grant in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(b) Section 1.117-2—Limitations applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(c) Section 1.117-3—Definitions applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(d) Section 1.117-4—Items not considered as scholarships or fellowship grants in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(e) Section 1.117-5—Federal grants requiring future service as a federal employee pertaining to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(f) Section 1.117-6—Qualified scholarships.

Par. 3. Section 1.117-1 is amended by revising the heading to read as set forth below, inserting "and before August 17, 1986," after "July 28, 1956," in the first sentence of paragraph (b)(2)(i), and adding a new paragraph (c) to read as follows:

§ 1.117-1 Exclusion of amounts received as a scholarship or fellowship grant in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(c) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 4. Section 1.117-2 is amended by revising the heading to read as set forth below, inserting "and before August 17, 1986," after "December 31, 1961," in the first sentence of paragraph (b)(1)(iii), and adding a new paragraph (c) to read as follows:

§ 1.117-2 Limitations applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(c) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16,

1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 5. Section 1.117-3 is amended by revising the heading to read as set forth below, inserting "of the Internal Revenue Code of 1954" after "151(e)(4)" in the first sentence of paragraph (b), inserting "of the Internal Revenue Code of 1954" after "151(e)(4)" in the last sentence of paragraph (b), and adding a new paragraph (f) to read as follows:

§ 1.117-3 Definitions applicable to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(f) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 6. Section 1.117-4 is amended as follows:

1. The heading is revised as set forth below.

2. The first sentence is revised by inserting "(a) *Applicability.*" before "The".

3. Paragraphs (a), (b), and (c) are redesignated as paragraphs (1), (2), and (3).

4. Paragraphs (1) and (2) of paragraph (3) as redesignated are redesignated as paragraphs (i) and (ii).

5. The second sentence of paragraph (3)(ii) as redesignated is amended by removing "subparagraph (1)" and adding in its place "subparagraph (i)".

6. A new paragraph (b) is added to read as set forth below.

§ 1.117-4 Items not considered as scholarships or fellowship grants in taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(b) *Special rule; termination date; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the

Tax Reform Act of 1986, unless otherwise indicated. This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 7. Section 1.117-5 is amended by revising the heading to read as set forth below, adding a second sentence to paragraph (f), and adding a new paragraph (g) to read as follows:

§ 1.117-5 Federal grants requiring future service as a federal employee pertaining to taxable years beginning before 1987, but only in the case of scholarships and fellowships granted before August 17, 1986.

(f) *Effective date.* * * * This section does not apply to amounts granted after August 16, 1986, except to the extent that amounts granted after August 16, 1986, and before January 1, 1987, and received prior to January 1, 1987, are attributable to expenditures incurred before January 1, 1987.

(g) *Special rule; cross reference.* For purposes of this section, all references to section 117 within this section are to section 117 as in effect prior to its amendment by the Tax Reform Act of 1986, unless otherwise indicated. See § 1.117-6(f) for rules relating to when a scholarship or fellowship is granted for purposes of section 117 as amended by the 1986 Act.

Par. 8. A new § 1.117-6 is added to read as follows:

§ 1.117-6 Qualified scholarships.

(a) *Outline of provisions.* This outline lists the paragraphs contained in § 1.117-6.

- (a) Outline of provisions.
- (b) Exclusion of qualified scholarships.
- (c) Definitions.
 - (1) Qualified scholarship.
 - (2) Qualified tuition and related expenses.
 - (3) Scholarship or fellowship grant.
- (i) In general.
- (ii) Items not considered as scholarships or fellowship grants.
- (4) Candidate for a degree.
- (5) Educational organization.
- (6) Examples.
- (d) Inclusion of qualified scholarships and qualified tuition reductions representing payment for services.
 - (1) In general.
 - (2) Payment for services.
 - (3) Determination of amount of scholarship or fellowship grant representing payment for services.

(4) Characterization of scholarship or fellowship grants representing payment for services for purposes of the reporting and withholding requirements.

(5) Examples.

(e) Recordkeeping requirements.

(f) Effective date.

(1) In general.

(2) When a scholarship or fellowship is granted.

(3) Scholarships or fellowships granted before August 17, 1986.

(i) In general.

(ii) Amounts received in subsequent academic periods that were not initially described as fixed cash amounts or readily determinable amounts.

(iii) Examples.

(4) Expenditures incurred before January 1, 1987.

(g) Reporting and withholding requirements.

(h) Characterization of scholarship or fellowship grants exceeding amounts permitted to be excluded from gross income for purposes of the standard deduction and filing requirements for dependents.

(b) *Exclusion of qualified scholarships*—(1) Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), subject to the rules set forth in paragraph (d) of this section. Generally, any amount of a scholarship or fellowship grant that is not excludable under section 117 is includable in the gross income of the recipient for the taxable year in which such amount is received, notwithstanding the provisions of section 102 (relating to exclusion from gross incomes of gifts). However, see section 127 and the regulations thereunder for rules permitting an exclusion from gross income for certain educational assistance payments. See also section 162 and the regulations thereunder for the deductibility as a trade or business expense of the educational expenses of an individual who is not a candidate for a degree.

(2) If the amount of a scholarship or fellowship grant eligible to be excluded as a qualified scholarship under this paragraph cannot be determined when the grant is received because expenditures for qualified tuition and related expenses have not yet been incurred, then that portion of any amount received as a scholarship or fellowship grant that is not used for qualified tuition and related expenses within the academic period to which the scholarship or fellowship grant applies must be included in the gross income of the recipient for the taxable year in which such academic period ends.

(c) *Definitions*—(1) *Qualified scholarship*. For purposes of this

section, a qualified scholarship is any amount received by an individual as a scholarship or fellowship grant (as defined in paragraph (c)(3) of this section), to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses (as defined in paragraph (c)(2) of this section). To be considered a qualified scholarship, the terms of the scholarship or fellowship grant need not expressly require that the amounts received be used for tuition and related expenses. However, to the extent that the terms of the grant specify that any portion of the grant cannot be used for tuition and related expenses or designate any portion of the grant for purposes other than tuition and related expenses (such as for room and board, or for a meal allowance), such amounts are not amounts received as a qualified scholarship. See paragraph (e) of this section for rules relating to recordkeeping requirements for establishing amounts used for qualified tuition and related expenses.

(2) *Qualified tuition and related expenses*. For purposes of this section, qualified tuition and related expenses are—

(i) Tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii); and

(ii) Fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

In order to be treated as related expenses under this section, the fees, books, supplies, and equipment must be required of all students in the particular course of instruction. Incidental expenses are not considered related expenses. Incidental expenses include expenses incurred for room and board, travel, research, clerical help, and equipment and other expenses that are not required for either enrollment or attendance at an educational organization, or in a course of instruction at such educational organization. See paragraph (c)(6), Example (1) of this section.

(3) *Scholarship or fellowship grant*—

(i) *In general*. Generally, a scholarship or fellowship grant is a cash amount paid or allowed to, or for the benefit of, an individual to aid such individual in the pursuit of study or research. A scholarship or fellowship grant also may be in the form of a reduction in the amount owed by the recipient to an educational organization for tuition, room and board, or any other fee. A scholarship or fellowship grant may be

funded by a governmental agency, college or university, charitable organization, business, or other source. To be considered a scholarship or fellowship grant for purposes of this section, any amount received need not be formally designated as a scholarship. For example, an "allowance" is treated as a scholarship if it meets the definition set forth in this paragraph. However, a scholarship or fellowship grant does not include any amount provided by an individual to aid a relative, friend, or other individual in the pursuit of study or research if the grantor is motivated by family or philanthropic considerations.

(ii) *Items not considered as scholarships or fellowship grants*. The following payments or allowances are not considered to be amounts received as a scholarship or fellowship grant for purposes of section 117:

(A) Educational and training allowances to a veteran pursuant to section 400 of the Servicemen's Readjustment Act of 1944 (58 Stat. 287) or pursuant to 38 U.S.C. 1631 (formerly section 231 of the Veteran's Readjustment Assistance Act of 1953).

(B) Tuition and subsistence allowances to members of the Armed Forces of the United States who are students at an educational institution operated by the United States or approved by the United States for their education and training, such as the United States Naval Academy and the United States Military Academy.

(4) *Candidate for a degree*. For purposes of this section, a candidate for a degree is—

(i) A primary or secondary school student;

(ii) An undergraduate or graduate student at a college or university who is pursuing studies or conducting research to meet the requirement for an academic or professional degree; or

(iii) A full-time or part-time student at an educational organization described in section 170(b)(1)(A)(ii) that—

(A) Provides an educational program that is acceptable for full credit towards a bachelor's or higher degree, or offers a program of training to prepare students for gainful employment in a recognized occupation, and

(B) Is authorized under Federal or State law to provide such a program and is accredited by a nationally recognized accreditation agency.

The student may pursue studies or conduct research at an educational organization other than the one conferring the degree provided that such study or research meets the requirements of the educational

organization granting the degree. See paragraph (c)(6), Examples (2) and (3) of this section.

(5) *Educational organization.* For purposes of this section, an educational organization is an organization described under section 170(b)(1)(A)(ii) and the regulations thereunder. An educational organization is described in section 170(b)(1)(A)(ii) if it has as its primary function the presentation of formal instruction, and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. See paragraph (c)(6), Example (4) of this section.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On September 1, 1987, A receives a scholarship from University U for academic year 1987-1988. A is enrolled in a writing course at U. Suggested supplies for the writing course in which A is enrolled include a word processor, but students in the course are not required to obtain a word processor. Any amount used for suggested supplies is not an amount used for qualified tuition and related expenses for purposes of this section. Thus, A may not include the cost of a word processor in determining the amount received by A as a qualified scholarship.

Example (2). B is a scholarship student during academic year 1987-1988 at Technical School V located in State W. B is enrolled in a program to train individuals to become data processors. V is authorized by State W to provide this program and is accredited by an appropriate accreditation agency. B is a candidate for a degree for purposes of this section. Thus, B may exclude from gross income any amount received as a qualified scholarship, subject to the rules set forth in paragraph (d) of this section.

Example (3). C holds a Ph.D in chemistry. On January 31, 1988, Foundation X awards C a fellowship. During 1988 C pursues chemistry research at Research Foundation Y, supported by the fellowship grant from X. C is not an employee of either foundation. C is not a candidate for a degree for purposes of this section. Thus, the fellowship grant from X must be included in C's gross income.

Example (4). On July 1, 1987, D receives a \$500 scholarship to take a correspondence course from School Z. D receives and returns all lessons to Z through the mail. No students are in attendance at Z's place of business. D is not attending an educational organization described in section 170(b)(1)(A)(ii) for purposes of this section. Thus, the \$500 scholarship must be included in D's gross income.

(d) *Inclusion of qualified scholarships and qualified tuition reductions representing payment for services—(1) In general.* The exclusion from gross income under this section does not

apply to that portion of any amount received as a qualified scholarship or qualified tuition reduction (as defined under section 117(d)) that represents payment for teaching, research, or other services by the student required as a condition to receiving the qualified scholarship or qualified tuition reduction, regardless of whether all candidates for the degree are required to perform such services. The provisions of this paragraph (d) apply not only to cash amounts received in return for such services, but also to amounts by which the tuition or related expenses of the person who performs services are reduced, whether or not pursuant to a tuition reduction plan described in section 117(d).

(2) *Payment for services.* For purposes of this section, a scholarship or fellowship grant represents payment for services when the grantor requires the recipient to perform services in return for the granting of the scholarship or fellowship. A requirement that the recipient pursue studies, research, or other activities primarily for the benefit of the grantor is treated as a requirement to perform services. A requirement that a recipient furnish periodic reports to the grantor for the purpose of keeping the grantor informed as to the general progress of the individual, however, does not constitute the performance of services. A scholarship or fellowship grant conditioned upon either past, present, or future teaching, research, or other services by the recipient represents payment for services under this section. See paragraph (d)(5), Examples (1), (2), (3) and (4) of this section.

(3) *Determination of amount of scholarship or fellowship grant representing payment for services.* If only a portion of a scholarship or fellowship grant represents payment for services, the grantor must determine the amount of the scholarship or fellowship grant (including any reduction in tuition or related expenses) to be allocated to payment for services. Factors to be taken into account in making this allocation include, but are not limited to, compensation paid by—

(i) The grantor for similar services performed by students with qualifications comparable to those of the scholarship recipient, but who do not receive scholarship or fellowship grants;

(ii) The grantor for similar services performed by full-time or part-time employees of the grantor who are not students; and

(iii) Educational organizations, other than the grantor of the scholarship or fellowship, for similar services

performed either by students or other employees.

If the recipient includes in gross income the amount allocated by the grantor to payment for services and such amount represents reasonable compensation for those services, then any additional amount of a scholarship or fellowship grant received from the same grantor that meets the requirements of paragraph (b) of this section is excludable from gross income. See paragraph (d)(5), Examples (5) and (6) of this section.

(4) *Characterization of scholarship or fellowship grants representing payment for services for purposes of the reporting and withholding requirements.* Any amount of a scholarship or fellowship grant that represents payment for services (as defined in paragraph (d)(2) of this section) is considered wages for purposes of sections 3401 and 3402 (relating to withholding for income taxes), section 6041 (relating to returns of information), and section 6051 (relating to reporting wages of employees). The application of sections 3101 and 3111 (relating to the Federal Insurance Contributions Act (FICA)), or section 3301 (relating to the Federal Unemployment Tax Act (FUTA)) depends upon the nature of the employment and the status of the organization. See sections 3121(b), 3306(c), and the regulations thereunder.

(5) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On November 15, 1987, A receives a \$5,000 qualified scholarship (as defined paragraph (c)(1) of this section) for academic year 1988-1989 under a federal program requiring A's future service as a federal employee. The \$5,000 scholarship represents payment for services for purposes of this section. Thus, the \$5,000 must be included in A's gross income as wages.

Example (2). B receives a \$10,000 scholarship from V Corporation on June 4, 1987, for academic year 1987-1988. As a condition to receiving the scholarship, B agrees to work for V after graduation. B has no previous relationship with V. The \$10,000 scholarship represents payment for future services for purposes of this section. Thus, the \$10,000 scholarship must be included in B's gross income as wages.

Example (3). On March 15, 1987, C is awarded a fellowship for academic year 1987-1988 to pursue a research project the nature of which is determined by the grantor, University W. C must submit a paper to W that describes the research results. The paper does not fulfill any course requirements. Under the terms of the grant, W may publish C's results, or otherwise use the results of C's research. C is treated as performing services for W. Thus, C's fellowship from W

represents payment for services and must be included in C's gross income as wages.

Example (4). On September 27, 1987, D receives a qualified scholarship (as defined in paragraph (c)(1) of this section) from University X for academic year 1987-1988. As a condition to receiving the scholarship, D performs services as a teaching assistant for X. Such services are required of all candidates for a degree at X. The amount of D's scholarship from X is equal to the compensation paid by X to teaching assistants who are part-time employees and not students at X. D's scholarship from X represents payment for services. Thus, the entire amount of D's scholarship from X must be included in D's gross income as wages.

Example (5). On June 11, 1987, E receives a \$6,000 scholarship for academic year 1987-1988 from University Y. As a condition to receiving the scholarship, E performs services as a researcher for Y. Other researchers who are not scholarship recipients receive \$2,000 for similar services for the year. Therefore, Y allocates \$2,000 of the scholarship amount to compensation for services performed by E. Thus, the portion of the scholarship that represents payment for services, \$2,000, must be included in E's gross income as wages. However, if E establishes expenditures of \$4,000 for qualified tuition and related expenses (as defined in paragraph (c)(2) of this section), then \$4,000 of E's scholarship is excludable from E's gross income as a qualified scholarship.

Example (6). During 1987 F is employed as a research assistant to a faculty member at University Z. F receives a salary from Z that represents reasonable compensation for the position of research assistant. In addition to salary, F receives from Z a qualified tuition reduction (as defined in section 117(d)) to be used to enroll in an undergraduate course at Z. F includes the salary in gross income. Thus, the qualified tuition reduction does not represent payment for services and therefore, is not includable in F's gross income.

(e) Recordkeeping requirements. In order to be eligible to exclude from gross income any amount received as a qualified scholarship (as defined in paragraph (c)(1) of this section), the recipient must maintain records that establish amounts used for qualified tuition and related expenses (as defined in paragraph (c)(2) of this section) as well as the total amount of qualified tuition and related expenses. Such amounts may be established by providing to the Service, upon request, copies of relevant bills, receipts, canceled checks, or other documentation or records that clearly reflect the use of the money. The recipient must also submit, upon request, documentation that established receipt of the grant, notification date of the grant, and the conditions and requirements of the particular grant. Subject to the rules set forth in paragraph (d) of this section, qualified scholarship amounts are excludable without the need to trace particular

grant dollars to particular expenditures for qualified tuition and related expenses.

(f) Effective date—(1) In general. The rules of this section generally apply to taxable years beginning on or after January 1, 1987. However, section 117, as in effect prior to its amendment by the Tax Reform Act of 1986 (1986 Act), continues to apply to scholarships and fellowships granted before August 17, 1986, whenever received. In addition, section 117, as in effect prior to its amendment by the 1986 Act, applies in the case of scholarships and fellowships granted after August 16, 1986, and before January 1, 1987, to the extent of any amount received prior to January 1, 1987, that is attributable to expenditures incurred before January 1, 1987.

(2) When a scholarship or fellowship is granted. For purposes of this section, a scholarship or fellowship is granted when the grantor either notifies the recipient of the award or notifies an organization or institution acting on behalf of a specified recipient of the award to be provided to such recipient. If the notification is sent by mail, notification occurs as of the date the notice is postmarked. If evidence of a postmark does not exist, the date on the award letter is treated as the notification date.

(3) Scholarships or fellowships granted before August 17, 1986—(i) In general. For purposes of this section, a scholarship or fellowship is considered granted before August 17, 1986, to the extent that, in a notice of award made before that date, the grantor made a firm commitment to provide the recipient with a fixed cash amount or a readily determinable amount. A notice of award is treated as containing a firm commitment even if the scholarship or fellowship grant is subject to a condition that the recipient remain in good standing or maintain a specific grade point average. In addition, a requirement that the recipient file a financial statement on an annual basis to show continuing financial need is not treated as a requirement to reapply to the grantor. If a scholarship or fellowship, initially awarded before August 17, 1986, is granted for a period exceeding one academic period (for example, a semester), amounts received in subsequent academic periods are treated as granted before August 17, 1986, only if—

(A) The amount awarded for the first academic period is described in the original notice of award as a fixed cash amount or readily determinable amount;

(B) The original notice of award contains a firm commitment by the grantor to provide the scholarship or

fellowship grant for more than one academic period; and

(C) The recipient is not required to reapply to the grantor in order to receive the scholarship or fellowship grant in future academic periods.

Scholarship or fellowship amounts treated as granted before August 17, 1986, must be applied against qualified tuition and related expenses before any amount of a scholarship or fellowship treated as granted after August 16, 1986, may be eligible for exclusion as a qualified scholarship.

(ii) Amounts received in subsequent academic periods that were not initially described as fixed cash amounts or readily determinable amounts. If the notice of award of a scholarship or fellowship grant satisfies the requirements of paragraph (i)(3)(i) of this section but does not describe the amount to be received in subsequent academic periods as either a fixed cash amount or readily determinable amount, then the amount received in each subsequent academic period that is treated as granted before August 17, 1986, may not exceed the amount granted for the initial academic period. To the extent that any amount received in a subsequent academic period, under the same notice of award, exceeds the amount received in the initial academic period, the excess amount is treated as a scholarship or fellowship granted after August 16, 1986.

(iii) Examples. The provisions of this paragraph may be illustrated by the following examples:

Example (1). On January 7, 1985, A receives a notice of award under a federal program of a \$500 scholarship for the academic period Spring 1985. A receives the \$500 in February 1986. For purposes of this section the \$500 scholarship is granted before August 17, 1986, and thus is subject to section 117 prior to its amendment by the 1986 Act.

Example (2). On May 7, 1986, B received a notice of award of a scholarship in the amount of \$4,000 annually for four years. The total amount of this scholarship is a fixed cash amount. Thus, \$16,000, the total amount of the scholarship for all four years, is subject to section 117 prior to its amendment by the 1986 Act.

Example (3). On May 7, 1986, C is notified of the award of the Y scholarship that will pay for C's tuition, room, and board for four years. The total amount of the Y scholarship is readily determinable. Thus, the total amount of the Y scholarship for all four years is subject to section 117 prior to its amendment by the 1986 Act.

Example (4). On May 7, 1986, D is notified that she is the recipient of a scholarship to attend university Z. The scholarship is not conditioned upon the performance of services by D. The notice provides that Z will award scholarship funds for four years and specifies

that D will receive \$5,000 during the first year. D is not required to reapply in order to receive scholarship funds during years 2 through 4. However, the notice does not specify the scholarship funds to be received in years 2 through 4. The \$5,000 received in year 1 is treated as granted before August 17, 1986, because this amount is a fixed cash amount described in the notice of award. In addition, because Z has made a specific commitment to provide scholarship funds during years 2 through 4 without requiring D to reapply for the scholarship, an amount from Z not exceeding \$5,000 per year is treated as granted before August 17, 1986, during years 2 through 4. Thus, if D receives \$4,000 from Z in year 2, the entire \$4,000 is treated as granted before August 17, 1986. If, in year 3, D receives \$6,000 from Z, only \$5,000 of the amount received is treated as granted before August 17, 1986. The additional \$1,000 received in year 3 is treated as granted after August 16, 1986. Whether this additional \$1,000 is excludable from D's gross income depends upon the amount of qualified tuition and related expenses (as defined in paragraph (c)(2) of this section) incurred by D in year 3. Thus, if D's qualified tuition and related expenses for year 3 are \$6,000, the entire \$6,000 is excludable from D's gross income.

Example (5). Assume the same facts as in Example (4) except that D's qualified tuition and related expenses in year 3 are \$5,500. D excludes the \$5,000 that is treated as granted before August 17, 1986. However, this \$5,000 must be applied against the total qualified tuition and related expenses of \$5,500 owed by D for year 3 before any amount received from a scholarship or fellowship granted after August 16, 1986, may be excluded. The additional \$1,000 received by D that is treated as granted after August 16, 1986, is excludable to the extent of \$500, the amount by which qualified tuition and related expenses exceed the amount that is treated as granted before August 17, 1986. The remaining \$500 scholarship amount must be included in D's gross income.

Example (6). Assume the same facts as in Example (4) except that D's qualified tuition and related expenses for year 3 are \$5,000. The amount of D's qualified tuition and related expenses for year 3 is equal to the scholarship amount from Z treated as granted before August 17, 1986. Thus, no part of the \$1,000 treated as granted after August 16, 1986, is excludable from D's gross income.

(4) Expenditures incurred before January 1, 1987. In the case of scholarships and fellowships granted after August 16, 1986, and before January 1, 1987, amounts received prior to January 1, 1987, that are attributable to expenditures incurred prior to January 1, 1987, are subject to section 117 as in effect prior to its amendment by the 1986 Act. For purposes of this section, an expenditure is incurred when it becomes properly due and payable by the recipient. However, expenditures relating to an academic period beginning after December 31, 1986, paid by the recipient before January 1, 1987, prior to the time when the recipient is billed for

such expenditures, are not treated as expenditures incurred before January 1, 1987. Thus, if in December 1986 an educational organization billed a scholarship recipient for expenses relating to the academic period beginning in January 1987, and the recipient used scholarship amounts received prior to January 1, 1987, to pay the expenses on January 5, 1987, the scholarship amounts used to pay such expenses are considered attributable to expenditures incurred prior to January 1, 1987. If, however, on December 31, 1986, a scholarship recipient used scholarship amount to pay expenses relating to the academic period beginning in January 1987, before the recipient was billed for such expenses, the amounts used are not treated as attributable to expenditures incurred before January 1, 1987.

(g) Reporting and withholding requirements. For return of information requirements, see section 6041, 6051, and the regulations thereunder. For withholding from scholarships or fellowship grants representing payment for services, see sections 3401, 3402, and the regulations thereunder. For withholding from scholarships or fellowship grants of nonresident aliens, see section 1441 and the regulations thereunder. For the application of FICA, see sections 3101 and 3111. For the application of FUTA, see section 3301.

(h) Characterization of scholarship or fellowship grants exceeding amounts permitted to be excluded from gross income for purposes of the standard deduction and filing requirements for dependents. For purposes of section 63(c)(5) (relating to the standard deduction for dependents) and section 6012(a)(1)(C)(i) (relating to dependents required to make returns of income), any amount of a scholarship or fellowship grant in excess of the amount permitted to be excluded from gross income under paragraph (b) of this section is considered earned income. For example, on June 11, 1987, A, a student who has no other earned or unearned income for the year and can be claimed as a dependent on another taxpayer's return of tax, receives a \$1,000 scholarship for room and board. The \$1,000 must be included in A's gross income because it is not a qualified scholarship under paragraph (b) of this section. However, for purposes of sections 63(c)(5) and 6012(a)(1)(C)(i), the \$1,000 is earned income. Accordingly, A is not required to file a return of tax for 1987 because A's gross income (\$1,000) does not exceed A's standard deduction (\$1,000) and A has no unearned income.

Par. 9. In § 1.6041-3, paragraph (q) is added to read as follows:

§ 1.6041-3 Payments for which no return of information is required under section 6041.

(q) Amounts paid to individuals as scholarships or fellowship grants, as defined in § 1.117-6(c)(3). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services, as defined in § 1.117-6(d)(2).

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

[FR Doc. 88-12891 Filed 6-8-88; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-016]

Electrical Safety-Related Work Practices

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of hearing; extension of written comment period.

SUMMARY: This notice schedules an informal public hearing on the proposed standard on electrical safety-related work practices, which was published in the Federal Register on November 30, 1987 (52 FR 45530; correction notice: 53 FR 2047). It also extends the period for submission of written comments on the proposed rule.

DATES: The hearing will begin on August 9, 1988, at 9:30 a.m. and may continue for more than one day based on the number of notices of intention to appear which are received.

Notices of intention to appear at the public hearing must be postmarked by July 11, 1988.

Testimony and evidence to be introduced into the hearing record must be postmarked by July 29, 1988. Written comments by persons not appearing at the hearing must also be postmarked by July 29, 1988.

ADDRESSES: The informal public hearing will be held in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Four copies of written comments must be sent to Docket Office, Docket S-016, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Rm. N3670, Washington, DC 20210.

Four copies of notices of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Rm. N3647, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Hearing: Mr. Tom Hall, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Rm. N3647, Washington, DC 20210, (202-523-8615). For information on how to submit notices of intention to appear, see the section of this notice entitled "Public Participation."

Proposal: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Rm. N3647, Washington, DC 20210, (202-523-8148).

SUPPLEMENTARY INFORMATION: On November 30, 1987, OSHA published a proposed standard on electrical safety-related work practices (52 FR 45530; correction notice: 53 FR 2047). The requirements of the standard were proposed to supplement the existing electrical installation requirements contained in 29 CFR Part 1910, Subpart S. Interested parties were given until February 29, 1988, to submit written comments on the proposal, to file objections, and to request a hearing.

Public Hearing

OSHA has received 45 comments on the proposal, including 6 requests for a hearing. In response to the objections raised and hearing requests received and in accordance with section 6(b)(3) of the Occupational Safety and Health Act, OSHA has scheduled an informal public hearing to be held on August 9, 1988. The hearing is being held to examine all issues raised by the proposal, including, but not limited to, the following:

(1) The United Steelworkers of America (Exhibit 4-45) objects to the removal of existing regulations, such as § 1910.265(c)(12), on the grounds that the existing provisions are more protective than the corresponding provisions in the proposal. OSHA requests information on which of the existing regulations that were proposed to be removed are more protective than the electrical safety-related work practices proposed to be added to 29 CFR Part 1910, Subpart S.

(2) The United Steelworkers of America (Exhibit 4-45) also argues that the proposal is too performance oriented. OSHA requests information on whether or not the proposal is too performance oriented, on what specific provisions are vague and unenforceable, and on what changes could be made to

these provisions to make them enforceable.

(3) Two of the hearing requests object to the scope of the proposal (proposed § 1910.331). The Edison Electric Institute (Exhibit 4-10) objects to the application of the proposal to work on or near electric utilization installations within an electric power generating plant. The National Arborists Association (Exhibit 4-30) objects to the proposal's coverage of the tree care industry. In view of these objections, OSHA requests information on the issue of whether or not the scope of the standard is appropriate as proposed.

(4) Three of the hearing requests object to the proposed requirements related to training (proposed § 1910.332). They claim that the proposal's training provisions are inadequate and do not provide sufficient protection from electrical hazards. The AFL-CIO (Exhibit 4-32) suggests that the requirements be expanded to cover the qualifications of the trainer, duration of the training, and demonstration of effectiveness of the training. The United Steelworkers of America (Exhibit 4-45) suggests that all workers be required to receive training and that the amount of required training be increased. The International Brotherhood of Teamsters (Exhibit 4-26) objects to OSHA's failure to provide a description, in objective terms, of what exposure to electrical hazards would trigger the training provisions. In view of these objections, OSHA requests information on the issue of whether or not the proposed training requirements would provide adequate protection from electrical hazards. OSHA also requests specific modifications of the language proposed in § 1910.332 that would improve employee safety.

(5) Three of the hearing requests object to the proposed requirements for lockout and tagging of electric circuits and equipment (§ 1910.333(b)). The Edison Electric Institute (Exhibit 4-10) argues that OSHA's proposal is inconsistent with tagging procedures in use by electric utilities which provide sufficient protection to employees. The International Brotherhood of Teamsters (Exhibit 4-26) requests that the lockout and tagging provisions be strengthened. They argue that tags should not be permitted to be used without locks and that there should be one lock per employee working on a given piece of equipment. The AFL-CIO (Exhibit 4-32) recommends that the lockout and tagging provisions be expanded to cover non-electrical as well as electrical hazards. OSHA requests comments on the issue of whether or not the lockout and tagging requirements proposed in

§ 1910.333(b) are reasonable and appropriate for the protection of employees.

(6) The Edison Electric Institute (Exhibit 4-10) objects to the requirements proposed in § 1910.333(c)(3)(ii) pertaining to work by qualified persons near overhead power lines. They argue that only trained and experienced utility linemen should be permitted to install electrical protective equipment on overhead power lines and that anyone other than these employees, line-clearance tree trimmers, and communications workers should be required to maintain a minimum clearance of 10 feet from overhead power lines. OSHA therefore requests public comment on the issue of whether or not the standard should allow other qualified employees to come closer than 10 feet to overhead power lines and, if so, under what circumstances.

(7) Three of the hearing requests object to the manner in which the proposal differentiates between "qualified persons" and "unqualified persons." (The term "qualified person" is currently defined in existing § 1910.399.) The Edison Electric Institute (Exhibit 4-10), the International Brotherhood of Teamsters (Exhibit 4-26), and the National Arborists Association (Exhibit 4-30) are concerned that the definition, in conjunction with the training requirements proposed in § 1910.332, is vague and would pose enforcement and compliance problems. OSHA requests public comment on how the standard could be changed to make the definition of "qualified person" more clear and the standard more enforceable.

(8) The Amalgamated Clothing and Textile Workers Union (Exhibit 4-44) objects to OSHA's use of data that covers only an 18-month period and is over ten years old. OSHA is planning to submit additional accident data at the hearing and invites the public to submit electrical accident information as well.

(9) The International Brotherhood of Teamsters (Exhibit 4-26) suggests that recommendations contained in the National Institute for Occupational Safety and Health's (NIOSH) December 1986 Alert, *Request for Assistance in Preventing Fatalities of Workers Who Contact Electrical Energy*, be included in the standard. The hearing request specifically suggests adopting NIOSH's recommendations on the institution of a "buddy system" and on training for emergencies (including medical training). OSHA requests comments on whether or not such provisions should be included in the standard.

(10) The International Brotherhood of Teamsters (Exhibit 4-26) also objects to the proposal's differences from NFPA 70E, the national consensus standard that covers electrical safety work practices. In view of this objection, OSHA invites public comment on whether or not the standard as proposed would be more effective in protecting employees from electrical hazards than NFPA 70E and on how the differences from NFPA 70E affect employee safety.

(11) Two of the hearing requests (Exhibits 4-10 and 4-45) also contain comments on numerous provisions contained in the proposal. OSHA invites additional public comment on any of the requirements contained in the proposal.

Public Participation

Under section 6(b)(3) of the Occupational Safety and Health Act, and 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in this notice will be provided at an informal public hearing, which will begin on Tuesday, August 9, 1988, in Washington, DC.

Notice of Intention to Appear at Hearing. All persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear with Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-8615. Filing of this notice entitles the participant to present information orally and to question witnesses at the hearing. This notice must be postmarked by July 11, 1988.

The notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office, must contain the following information:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and a summary of the evidence proposed to be adduced at the hearing.

Filing of Testimony and Evidence Before the Hearing. Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony including all documentary evidence to the OSHA

Division of Consumer Affairs. This material must be postmarked by July 29, 1988. This material will be available for inspection and copying at the OSHA Docket Office.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

Conduct of the Hearing. The hearing will commence at 9:30 a.m. on August 9, 1988, in the Auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Written Comments. Interested persons are invited to submit written comments on the issues raised in the proposal and summarized in this notice. Written comments must be postmarked on or before July 29, 1988, and submitted, in quadruplicate, to the Docket Office, Docket No. S-106, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3670, Washington, DC 20210. (The telephone number of the Docket Office is (202) 523-7894.) Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Certification of Record and Final Determination After Hearing. Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued, or a determination will be made not to issue a rule, based on the entire record of the proceeding, including the written comments and data received from the public.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9-83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 2nd day of June 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

[FR Doc. 88-12925 Filed 6-8-88; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BERC-303-P]

Medicare Program; Health Maintenance Organizations and Competitive Medical Plans; Coordinated Open Enrollment

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current Medicare requirements for enrollment of beneficiaries in health maintenance organizations (HMOs) and competitive medical plans (CMPs). It would require all HMOs and CMPs that have Medicare

contracts to conduct open enrollment at least during the entire month of November of each year. During this period and any other open enrollment period provided by the organization it would be required to accept, without restriction and up to the limits of its capacity, all eligible Medicare beneficiaries who apply for enrollment in the order in which they apply. We also propose that all organizations contract with HCFA on a calendar year basis in order to facilitate the statutory requirement that individuals who enroll during the annual "coordinated enrollment period" will not have premium charges increased or additional benefits decreased for 12 months. These provisions would implement section 1876(c)(3)(A)(ii) of the Act, as amended by section 2350(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369). Establishment of a coordinated open enrollment period would give Medicare beneficiaries a better opportunity to consider the advantages of enrolling in an HMO or CMP and to compare the benefits offered and premiums charged by participating organizations. It would also serve to sharpen competition among these organizations.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 8, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-303-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC, 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC-303-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through

Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Frank Emerson, (301) 966-5650 (Reimbursement Issues).

Joan Mahanes, (301) 966-4642 (Issues other than reimbursement).

Stephen Balcerzak, (202) 245-0108 (Operational Issues).

SUPPLEMENTARY INFORMATION:

I. Background

A. General

A health maintenance organization (HMO) or a competitive medical plan (CMP) may be described generally as an organization that provides health care services, on a prepaid basis, to a group of persons who are enrolled as members.

Section 1876 of the Social Security Act (the Act), as amended by section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, authorizes the Secretary to enter into contracts with HMOs and CMPs (herein referred to as eligible organizations) under which the organizations receive payment from the Health Care Financing Administration (HCFA) in return for providing Medicare covered services to Medicare beneficiaries who enroll in the organizations. Under this section of the Act, two types of contracts are available to eligible organizations: one that permits payment on a reasonable cost basis, and one that provides for payment on a risk basis.

B. Payments to Eligible Organizations

1. Reasonable Cost Payment

Under the reasonable cost payment method, payment is made to the eligible organization(s) on an interim basis using a monthly capitation rate. At the end of the eligible organization's contract term, payments are adjusted to equal the reasonable cost of the covered services the eligible organization furnished to its Medicare enrollees, using as a model the Medicare payment principles that are commonly used to calculate reasonable costs (as defined in section 1861(v) of the Act) for providers of services (also see Medicare regulations at 42 CFR 417.530 through 417.576).

2. Risk Payment

The authority to enter into risk contracts was established to encourage eligible organizations to participate in Medicare in a competitive manner and to provide incentives to competition in the health care field. In general, risk basis eligible organizations are paid each month, in advance, a predetermined rate for each Medicare

beneficiary enrolled in the organization; the monthly capitation rate is not subject to adjustment based on actual use of services. The regulations implementing this authority are located at 42 CFR Part 417, Subpart C.

Section 1876 (a), (e), and (g) of the Act provides a process of prospective payment based on the Secretary's annual determination of an adjusted average per capita cost (AAPCC) for each class of Medicare enrollees in an eligible organization. In order to determine the appropriate payment amount, enrolled beneficiaries are first grouped into classes according to the following demographic factors: age, sex, Medicaid status, disability status, institutional status, and other relevant factors that HCFA determines have a significant effect on the use and costs of health care services. The AAPCC is an actuarial estimate made by HCFA of the average per capita cost that would have been incurred by the Medicare program on behalf of each class of Medicare enrollee of the organization if that class of enrollee had received its covered services from fee-for-service providers and suppliers in the same or similar geographic area serviced by the eligible organization.

In general, eligible organizations receive a monthly per capita payment in advance for each beneficiary who is registered in HCFA's records as a Medicare enrollee of the organization. The per capita payment equals 95 percent of the AAPCC for each class of enrollee.

This payment is subject to a reconciliation process to take into account any differences between the organization's actual number of Medicare enrollees in each class and the number of individuals estimated to be enrolled in each class when determining the amount of advanced payment.

Prior to each contract period, for purposes of determining whether or not a risk organization must provide its Medicare enrollees with additional benefits during the contract period, the following actions take place:

(1) HCFA furnishes to each eligible organization a per capita rate of payment for each class of Medicare enrollee (§ 417.584(b)(2)).

(2) Taking into account the information provided by HCFA in: (1) Above, the organization computes and provides to HCFA an estimated monthly per capita average payment rate (APR) based on the organization's anticipated enrollment distribution among the various classes of enrollees (§ 417.590).

(3) The organization computes and provides to HCFA its adjusted

community rate (ACR), which is then reviewed and approved (or modified, if necessary) by HCFA. The ACR is the equivalent of the premium that the organization would have charged Medicare enrollees for a benefit package limited to Medicare covered services independently of Medicare payments to the organization (for example, as if Medicare was not making payments to the organization) using the same financial assumptions the organization uses for its non-Medicare enrollees.

If the risk organization's ACR for Medicare covered services is less than the organization's APR for these services, the organization must either accept a reduced monthly payment from HCFA or provide its Medicare enrollees with additional benefits (in the form of additional services, a reduction in premiums or copayments, or a combination of these). The additional benefits must be at least equal in value to the difference between the ACR and the APR, unless the organization requests a reduction in its monthly payment from HCFA or requests that HCFA withhold a part of the value of the additional benefits it would otherwise be required to provide to its Medicare enrollees and place it in a benefit stabilization fund (BSF). The withholding of amounts in a BSF is for the purpose of stabilizing fluctuations in the availability of the additional benefits provided by an organization to its Medicare enrollees. An organization may request a withdrawal from its fund when the organization notifies HCFA of its ACR and APR for a future contract period to prevent excessive fluctuations in the provision of required additional benefits for that contract period. Regulations at §§ 417.580 through 417.598 implement those portions of the Act pertaining to an organization's BSF and the amount HCFA pays an organization for its Medicare enrollees who are enrolled on a risk basis.

Under section 1876(c)(2)(B) of the Act and § 417.440(b)(2) of the regulations, a Medicare enrollee of an organization may elect to pay for optional supplemental services that are offered by the organization in addition to the additional benefits required above. Subject to the approval of HCFA, a risk organization may also require Medicare enrollees to accept and pay for mandatory supplemental services that the organization selects and HCFA approves. (§ 417.440(b)(3)).

C. Contract and Enrollment Requirements

The original HMO/CMP legislation also established certain requirements with respect to contracts and enrollment

procedures under section 1876 of the Act. These requirements apply to all eligible organizations, those under cost contracts and those under risk contracts.

Section 1876(i)(1) of the Act and §§ 417.474 and 417.490 of the regulations, require that each contract entered into between HCFA and an eligible organization will be for a term of at least 12 months and will be automatically renewable unless HCFA or the organization decides not to renew. During the annual term of the contract, all organizations including cost contractors, must guarantee the provision of all services required under the contract. Section 1876(c)(3)(A)(i) of the Act and §§ 417.413(f) and 417.426 of the regulations require that each eligible organization have an annual open enrollment period for Medicare beneficiaries of at least 30 days duration. The statute and regulations also require that an eligible organization must enroll beneficiaries on a first-come, first-served basis during open enrollment unless it has received a waiver of the open enrollment requirement. An organization may apply for a waiver of the open enrollment requirement if compliance would prevent adherence to required limitations on enrollment of Medicare or Medicaid beneficiaries (for example, 50 percent of membership), or result in an enrollment substantially nonrepresentative of the population of the organization's geographic area.

An organization may also request permission to limit enrollments because of capacity limitations. In determining its enrollment capacity, an organization may reserve a reasonable number of vacancies for anticipated new groups (such as employer group health plans contracting with the organization) or new members of existing group contracts. Amended section 1876(c)(3)(B) of the Act and § 417.460(b) of the regulations provide that beneficiaries may file notice at any time of their intention to terminate their enrollment in an eligible organization and that the disenrollment will be effective with the first of the following month.

D. Deficit Reduction Act of 1984 (DEFRA)

Section 2350(a)(1) of DEFRA amended the open enrollment provisions under section 1876(c)(3)(A) of the Act. Section 1876(c)(3)(A)(ii) of the Act as amended, requires that for each area served by more than one eligible organization, the Secretary must establish (after consultation with these organizations) a single 30-day period each year during which all the organizations serving the

area must provide for open enrollment. (Hereafter, this process will be referred to as coordinated open enrollment.) Eligible organizations may, at their option, provide for additional open enrollment periods as they deem appropriate.

Section 1876(c)(3)(A)(ii) of the Act as amended also requires the Secretary to determine an organization's rate of payment in a manner that assures that beneficiaries enrolling during the coordinated open enrollment period will not have their premiums increased or their benefits decreased for the 12 month enrollment period for which the beneficiary is enrolling. Section 2350(a)(2) of DEFRA authorized the Secretary to phase in coordinated open enrollment over a period of 3 years, if the Secretary determined that a single 30-day open enrollment period for all areas was not administratively feasible by the end of the 3-year period.

In considering this legislation, Congress expected the Secretary to take necessary measures to assure that an appropriate portion of an eligible organization's enrollment capacity is reserved to accommodate Medicare enrollees during coordinated open enrollment.

II. Major Provisions of the Proposed Regulations

In order to implement the statutory directive that annual per capita rates (AAPCC) be determined in a manner that assures that the benefit package not be decreased and premiums not be increased for at least 12 months for individuals who enroll during the coordinated open enrollment period, a single nationwide open enrollment period is necessary. Since payment rates are effective for 12 months beginning January 1, the effective date of enrollment for beneficiaries who enroll during the coordinated open enrollment period should also be January 1. However, until now we have been unable to produce the AAPCC figures early enough in a year to allow enough time to complete the necessary steps for holding a coordinated open enrollment that would result in the new enrollments taking effect the following January 1. This was because in several data areas, the major one being the final inpatient hospital prospective payment system (PPS) rates were not ready in time to allow us to calculate the AAPCC before September 7, allowing too little time for organizations to consider these rates, submit their benefit packages and ACR proposals for HCFA review, conduct a 30-day open enrollment, and process the enrollments by January 1.

Section 4002 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) enacted December 22, 1987 prescribes the update factors in advance for hospitals subject to PPS. As a result, we now have the PPS update factor prior to August 1. This statutory change makes it possible to calculate, and make available, the AAPCC rates by August 1 of each year.

This in turn also gives us time to complete the additional steps to implement coordinated open enrollment.

The provisions of the proposed regulations are discussed below.

A. Enrollment

In § 417.204(d), we propose that HMOs contracting under Subpart B (pre-TEFRA contracts) hold their annual open enrollment period during the month of November of each year.

In § 417.426(a), we propose that all organizations must provide a coordinated open enrollment period for Medicare beneficiaries during the month of November of each year (as opposed to a nonspecified 30-day period), in addition to any other open enrollment period the organization may provide.

In § 417.426(b), we propose that an eligible organization approaching its enrollment capacity must obtain a waiver of the open enrollment requirement. The waiver must specify a reasonable number of vacancies to be set aside for Medicare beneficiaries during the coordinated open enrollment period. The waiver request must be submitted to HCFA at least 90 days before the beginning of its coordinated open enrollment period. HCFA would evaluate the organization's submittal and notify the organization as to whether its proposal was approved or disapproved. If the organization fails to submit this information on a timely basis or fails to offer enrollment to the number of Medicare beneficiaries HCFA approves, HCFA could under the provisions of § 417.494(b), terminate or not renew the contract. Also, HCFA will refuse to process new enrollments for a plan that has failed to comply with coordinated open enrollment requirements until the following November's coordinated open enrollment.

In § 417.450, we propose that the effective month of coverage for a Medicare beneficiary who enrolls in an eligible organization during the organization's annual November coordinated open enrollment period would be the following January.

B. Benefit Protection

We would amend § 417.440 by adding paragraph (c) to specify that for

Medicare beneficiaries who are enrolled in an organization for all or any part of a calendar year, the organization may not reduce any of the additional benefits required by statute or any of the mandatory or optional supplemental benefits offered by the organization, to which the beneficiaries are entitled, through December 31 of that year.

In a new paragraph (f) in § 417.452, we propose that the organization may not increase the beneficiaries liability for any premium or other charges that may apply to any benefits offered by the organization under the contract during the calendar year. We also propose that both § 417.440(c) and § 417.452(f) specify that organizations must notify Medicare enrollees prior to November 1 of benefit or premium changes that will be effective for the following calendar year.

In addition, in a new paragraph § 417.454(b), we propose that an organization may not increase charges to Medicare beneficiaries who are enrolled in an organization for all or any part of a calendar year, through December 31 of that year.

C. Contract Period Requirements

In § 417.401, we propose to add the definition of "calendar year" to mean the 12-month period of time beginning January 1 and ending December 31.

In § 417.474, we propose to add a new paragraph (d) to require that all organizations contract on a calendar year basis. For organizations currently contracting on other than a calendar year basis (or organizations seeking an initial contract to begin on any date other than January 1), the term of the first renewal contract (or first contract, for newly contracting organizations), after the effective date of these regulations, would begin the day after the date the organization's current contract terminates (or for new organizations the date the organization selects) and extend through December 31 of the following year, so that subsequent renewals will be on a calendar year basis.

In § 417.490, we propose that an organization's contract be renewed automatically for the next 12-month period beginning the following January 1 unless HCFA or the organization decides not to renew, or unless HCFA has extended the contract under the provisions at § 417.474, so that the contract term ends on December 31.

In § 417.494(a)(3), we would exempt an eligible organization from the requirement that it notify its Medicare enrollees of a contract termination if it terminates its contract on December 31 solely for the purpose of immediately beginning a calendar year contract.

Likewise, HCFA would not notify the general public about the contract termination.

D. Risk Payment

We would revise § 417.584(b)(2) to provide that HCFA will make the payment rates for the following calendar year's contract period available not later than August 1 of each year.

In § 417.590 (a) and (c), we propose that if the contract period extends for more than one calendar year (in accordance with § 417.474(d)), the organization must prepare separate ACR and APR computations for each of the two calendar years in the contract period.

In § 417.592(d), we propose that a risk organization notify HCFA not later than September 15 before the beginning of the contract period of its ACR and APR calculations for the following year.

In § 417.594(f), we propose to add that if a contract extends for more than one calendar year, (under § 417.474(d)), the terms and conditions concerning computation of the ACR specified in § 417.594(a) through (e) apply separately in each of the two calendar years in the contract period.

In § 417.597, we are clarifying that requests for withdrawals from the benefit stabilization fund (BSF) apply to the period covered by the ACRs and APRs.

E. Other Changes

In §§ 417.401, 417.474(c), 417.592(d)(1), (2), and (e)(2), 417.594(b)(5), and 417.596(c)(1), we propose to make minor changes to conform these sections to the open enrollment and calendar year contract proposals.

III. Significant Issues Considered in Developing Proposal Regulations

A. Benefit Protection

As stated earlier, section 1876(c)(3)(A)(ii) of the Act requires the Secretary to determine an eligible organization's rate of payment in such a way that the Medicare beneficiaries who enroll during a coordinated open enrollment period will not have "premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective."

1. Benefit Protection for Persons Not Enrolling During a Coordinated Open Enrollment Period

We considered whether the benefit protection established under this section of the Act should apply to beneficiaries who enroll in the organization during

open enrollment periods other than the November coordinated open enrollment period. We determined all beneficiaries who are enrolled in the organization should be assured that benefits will not be decreased nor charges increased for a definite period of time. However, beneficiaries who enroll during open enrollment periods other than the November coordinated open enrollment period (as well as beneficiaries who are already enrolled in the organization as of January 1 of any year) should be guaranteed that charges will not be increased or benefits decreased through December 31 of the current year. This policy mirrors our current practice, except that HCFA will no longer permit organizations to impose premiums previously waived by the organization if HCFA must reduce payments under the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177, (also known as the Gramm-Rudman-Hollings Act).

2. Supplemental Services

We considered whether the benefit protection established under this section of the Act should apply to the provision of supplemental services authorized under section 1876(c)(2) of the Act. Supplemental services are services an organization may offer, in addition to certain additional benefits required by statute, for which the Medicare enrollee may elect to pay or, subject to the approval of HCFA, a risk organization may require Medicare enrollees to accept and pay for. We determined that the benefit protection clause set forth in the statute does apply to supplemental services because the statute does not distinguish between additional benefits required by statute and additional benefits that the beneficiary may elect or be required by the organization to purchase.

3. Contract Period

In meeting the benefit protection and rate determination requirements of the statute, we considered permitting the contract periods of risk organizations and periods of benefit protection for those enrolling during a coordinated open enrollment period to differ. We concluded that this would not be feasible since it would confuse Medicare beneficiaries, who would be treated differently by organizations depending on whether they enrolled during coordinated open enrollment or at some other time. Such a proposal would also be difficult for plans to administer since Medicare enrollees would be entitled to different benefits depending on whether they enrolled during coordinated open enrollment or any other enrollment

period. Also, it would put the organization at risk of being incorrectly paid for services provided to their enrollees. As previously described in this preamble, a process of prospective payment was created for risk organizations whereby an organization receives monthly advance payments and determinations are made regarding additional benefits that must be provided to enrollees during a contract period based on certain calculations that are related to the organization's per capita rate of payment established under section 1876(a)(1)(A) of the Act. Per capita rates must be determined by HCFA on an annual basis (section 1876(g)(2) of the Act). Therefore, if the organization's contract were to expire during the period when coordinated open enrollment beneficiaries are protected from premium increases or benefit decreases, the organization would be forced to maintain the same benefit plan for those individuals even though the period of time on which benefit calculations were based had lapsed, and even though new calculations may indicate a need for premium or benefit changes in the new contract period.

We considered avoiding the situation of two sets of enrollees and plans operating simultaneously by extending the contract and the terms of the contract (payments and benefits established) for up to an additional 11 months with no change in payment rates. However, we concluded that this would not be reasonable because the calculations (that is, the prospective payment rates and benefit determination process) should be updated at least once every 12 months.

In view of these problems, we concluded that our proposed rules must require that the contract period and the 12 month benefit protection period coincide with a calendar year. (An exception would be made for organizations in transition to a calendar year contract period, as discussed in Section D below.)

B. National Coordinated Open Enrollment Period

Having established the need for the contract period and benefit protection period to be the same, we determined that it would be administratively more practical to establish a single month, nationwide, when all organizations would conduct a single coordinated open enrollment period rather than having different coordinated open enrollment periods for each geographic area. A single nationwide coordinated enrollment period would prevent hardships in several different

circumstances. For instance, we believe that as new organizations proliferate, geographic areas will overlap creating the potential for different coordinated open enrollment periods for different sections of an organization's geographic area. It would be difficult for organizations to comply with this arrangement. A national coordinated open enrollment period for all organizations could be advertised more easily than different enrollment periods for different areas, and should result in additional convenience to Medicare beneficiaries planning changes in their health insurance. A national coordinated open enrollment period could result in an increase in enrollments as beneficiaries will have the opportunity to compare, at the same time, the advantages of enrolling in an eligible organization over remaining in the fee-for-service Medicare system.

Also, we have had experience, since the final HMO/CMP regulations were published in 1985, with some organizations choosing not to renew their contracts at the conclusion of their terms. A single national coordinated open enrollment period would facilitate the transfer of enrollees from non-renewing organizations to other organizations in the area. Without a single coordinated open enrollment period, organizations could simply close enrollment (assuming the required 30-day open enrollment period had been or would be conducted within a 12-month period) to enrollees wishing to transfer from non-renewing organizations.

In order to facilitate a calendar year period in which benefits would not be decreased nor charges increased, we selected the month of November as the 30-day period during which all eligible organizations must conduct a coordinated open enrollment. Applications for enrollment received during November could all be processed in time to make January the month in which a new enrollee's effective date of coverage would begin.

We believe January is the preferred month for several reasons. First, based on our contract experience to date with eligible organizations, January has been the month in which the majority of the contract periods have begun. Therefore, of the 12 months in a year, January would appear to be acceptable to the greatest number of risk organizations. Second, the Medicare statute provides that the AAPCC will be on a calendar year basis, and a 12-month calendar year payment ratebook (a table of per capita rates of payment for each class of Medicare enrollee in the organization based on a calendar year) coincides

best with the necessary actuarial calculations we must make, both in terms of the availability of data and our workload.

Third, we considered exempting organizations in whose geographic area no other eligible organizations compete for enrollees since their inclusion is not required under the statute. However, the statute does not bar us from requiring those organizations to participate, and we have determined that their inclusion would simplify administration of the national coordinated open enrollment period.

Fourth, we considered whether coordinated open enrollment should apply to HMOs still contracting on a risk basis under rules in effect prior to the effective date of TEFRA. Section 114(c)(1)(B) of TEFRA provides that the TEFRA amendments to section 1876 of the Act will not apply with respect to services furnished by HMOs which had risk-sharing contracts in effect on the effective date of the TEFRA amendments for the following 5 year period (that is, until February 1, 1990). There are four HMOs contracting on this basis. Section 2350 of DEFRA does not distinguish between pre-TEFRA risk contractors and TEFRA contractors, and we believe that a single coordinated open enrollment period applicable to all contractors best serves the interest of the Medicare program. For these reasons, and because section 114(c)(1)(B) of TEFRA does not preclude our amending the regulations affecting enrollment in pre-TEFRA risk contracts (42 CFR Part 417, Subpart B), we propose to amend § 417.204(d) to provide that pre-TEFRA risk contracts hold their annual 30-day open enrollment period during the month of November. We have made this change so that all HMOs and CMPs with Medicare contracts will hold an open enrollment period simultaneously in November, to simplify administration of the national coordinated open enrollment period for HCFA, and for the convenience of beneficiaries who may wish to enroll.

C. Consultation Process

Section 1876(c)(3)(A)(ii) of the Act as amended, requires that the Secretary consult with affected organizations concerning the timing of the coordinated open enrollment period. Because of the reasons set forth above, we are proposing to establish a single national coordinated open enrollment period each November with coverage effective the following January. We will carefully consider comments from organizations on the timing of the enrollment period.

D. Transition to Coordinated Open Enrollment

We considered how best to effectuate a smooth transition to coordinated open enrollment for risk organizations that are not currently contracting on a calendar year basis (that is, how organizations might make a transition to a January through December contract period). One option might be for the organization to enter into a contract with HCFA for a period of less than 12 months. For example, if a contract period ends July 31, a new contract could be established for the period August through December in order that another new contract could be established for a period of 12 months beginning January 1 of the following calendar year. However, the statute requires each contract to be for at least one year. Another option is to "extend" the contract period already in effect through December 31 of a calendar year. In this case, if a contract period would normally end July 31, HCFA would extend the term of the contract to the following December 31 so that a new contract period could be established for a period of 12 months beginning January 1. The extension period would, in this situation, cover that period August 1 through December 31. However, in accordance with the current regulations at § 417.494(a), an eligible organization would have to agree to extend the term of its contract in order for it to be extended. HCFA could not unilaterally require organizations to agree to a contract modification. Universal compliance with the coordinated open enrollment provisions of the statute would therefore be jeopardized. A third alternative, the one we selected, is to require that an organization's next contract renewal term, (or new organizations' initial contract term, if effective on any date other than January 1) extend through December 31 of the following year.

As stated in section II. of this preamble, we are proposing to require recalculation of the monthly Medicare payment and additional benefits for the calendar year following the contract effective date as if that calendar year was an annual contract period renewal (§ 417.590). The alternative to this approach would be to continue with the same terms through the entire term of the contract for the first 12 months of the contract. We chose to require that rates be adjusted on January 1 during the contract term, believing that it would be inequitable to risk organizations for payment arrangements to remain in effect for up to 23 months. Additionally, we believe it is the intent of the statute

that payment rates should be reviewed and updated annually.

We believe the transition process we have proposed would not unduly burden eligible organizations that extend their contracts under § 417.474(d). We would exempt organizations that choose to terminate their contracts on December 31 and execute new ones effective January 1 from meeting the requirement of § 417.494(c) concerning notification of termination to Medicare enrollees, since this notification process is directed toward organizations that do not intend to re-execute their contracts immediately. However, these organizations would not be exempt from notifying enrollees of modifications in their contracts as required under § 417.494(a)(2). Notification under this circumstance would occur earlier than usual for organizations that do not now contract on a calendar year basis. After this one instance, notification would normally be required only when the contract is renewed annually. Existing contracts are renewed annually in any case, and most new organizations prefer to update their plans on January 1 in order to reflect new AAPCC rates and current costs (APR and ACR).

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial 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 proposed regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers as small entities.

Currently, the statute requires eligible organizations to enter into Medicare contracts for a term of at least 12 months and have an annual open enrollment period of at least 30 days duration. This proposed rule would require eligible organizations to hold an

annual coordinated open enrollment of all Medicare beneficiaries during the month of November each year. Further, the proposal would require all organizations to contract on a calendar year basis.

We believe that these changes would have a minimal economic impact in light of the fact that most eligible organizations have already selected the calendar year contracting period. Also, the selection of a single open enrollment period would provide a more effective and less confusing process for all parties concerned.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have, therefore, not prepared a regulatory flexibility analysis.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

Sections 417.426(b)(1) and (4), 417.474(c), 417.494(a)(3), 417.592(d), 417.594(b)(5), 417.596, 417.597, and 417.598, of this rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we have submitted a copy of this document to the Executive Office of

Management and Budget (EOMB) for its review of these information collection requirements.

The requirements contained in the above-mentioned sections were approved by EOMB, and the EOMB approval number is 0938-0406. However, the approval expired in April 1988. Therefore, we have required an extension of that approval.

In addition, § 417.426(b) of this proposed rule contains information collection requirements that have not been approved by EOMB. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of this preamble.

List of Subjects in 42 CFR Part 417

Administrative practice and procedures, Health maintenance organizations (HMO), Medicare, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR Part 417, would be amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act, as amended (42 U.S.C. 216 and 300e through 300e-17), unless otherwise noted.

2. Section 417.204(d) is revised to read as follows:

§ 417.204 Qualifying condition: Membership.

(d) *Standard: Open enrollment.* An HMO will enroll title XVIII beneficiaries on a first-come, first-served basis, up to the limit of its capacity, and will hold an open enrollment period not less than annually during the entire month of November for beneficiaries on that basis. This requirement may be waived by the Secretary if the organization's compliance would result in a failure to meet the requirements of § 417.204(c)(1) or would result in a membership that is substantially nonrepresentative of the population in the area it serves. For purposes of this subpart, a subgroup of enrollees is generally not considered to

make the membership substantially nonrepresentative unless its proportion among all the HMO's enrollees exceeds by at least 10 percentage points its proportion in the general population in the same enrollment area (see § 417.205(a)(1)), based on such census and other data as the Secretary finds appropriate.

3. In § 417.401, the introductory text is republished, the definition for "Benefit stabilization fund" is revised and new "calendar year" and "coordinated open enrollment period" definitions are added to read as follows:

§ 417.401 Definitions.

As used in this subpart, unless the context indicates otherwise—

Benefit stabilization fund means a fund established by HCFA at the request of an eligible organization with a new risk contract to withhold a portion of the per capita payments available to the organization for payment in a subsequent calendar year for the purpose of stabilizing fluctuations in the availability of the additional benefits provided by the organization to its Medicare enrollees.

Calendar year means the 12 month period of time beginning January 1 and ending December 31.

Coordinated open enrollment period means the month of November of each year, during which all contracting eligible organizations must enroll Medicare beneficiaries in the order in which they apply and without restrictions except as authorized in this part.

4. Section 417.413 is amended by revising the heading for paragraph (f) and paragraph (f)(1) to read as follows:

§ 417.413 Qualifying condition: Operating experience and enrollment.

(f) *Standard: Open enrollment period.* (1) Except as specified in paragraph (f)(2) of this section, an organization must enroll Medicare beneficiaries on a first-come, first-served basis to the limit of its capacity and provide at least one annual open enrollment period of at least 30 days duration for Medicare beneficiaries including the entire month of November each calendar year.

5. Section 417.426 is revised to read as follows:

§ 417.426 Open enrollment requirements.

(a) *Basic requirements.* (1) Eligible organizations must provide open enrollment for Medicare beneficiaries

for at least 30 consecutive days during the month of November of each year, the annual coordinated open enrollment period. Organizations may provide for additional open enrollment periods as they deem appropriate, consistent with the requirements of this part, except an organization that has failed to comply with the requirements for a coordinated open enrollment period may not enroll any additional Medicare beneficiaries until the next annual coordinated open enrollment period.

(2) During any open enrollment period, the organization must enroll eligible Medicare beneficiaries in the order in which their applications are received and until its enrollment capacity is reached.

(b) *Capacity to accept new enrollees.*

(1) An eligible organization that is approaching capacity that wishes to limit enrollment must obtain a waiver of the open enrollment requirement as provided in this section. This waiver will specify a reasonable number of vacancies to be set aside for Medicare beneficiaries during the coordinated open enrollment period.

(2) An organization that proposes to limit enrollments because of its capacity, as described in paragraph (b)(1) of this section, must notify HCFA at least 90 days before the beginning of any open enrollment period, including the coordinated open enrollment period, and at that time, provide HCFA with the number of vacancies set aside for Medicare beneficiaries and with its reasons for limiting enrollment.

(3) HCFA will evaluate and approve or disapprove the organization's submittal under paragraphs (b) (1) and (2) of this section.

(4) The organization must promptly notify HCFA if there is any change in its enrollment capacity.

(c) *Reserved vacancies.* In addition to any vacancies set aside under paragraphs (b) (1) and (2) of this section, an organization may set aside a reasonable number of vacancies for an anticipated new group contract or for anticipated new members of an existing group contract that will have its enrollment period after the Medicare coordinated open enrollment period during the current and upcoming contract year—

(1) Subject to HCFA's approval; and

(2) On condition that any vacancies set aside that are not filled within a reasonable period of time after the beginning of the group contract enrollment period be made available to Medicare beneficiaries and other

nongroup applicants under the requirements of this subpart.

6. In § 417.440, paragraph (e) is redesignated as (f), paragraph (d) is redesignated as (e), paragraph (c) is redesignated as (d), and a new paragraph (c) is added to read as follows:

§ 417.440 Entitlement to health care services from an organization.

(c) *Prohibition on reduction of benefits.* For Medicare beneficiaries who are enrolled in an organization for all or any part of a year, the organization may not reduce any of the benefits to which the beneficiaries are entitled under the contract through December 31 of that year. Organizations must notify Medicare enrollees prior to November 1 of any benefit or premium changes that will be effective for the following calendar year.

7. Section 417.450 is amended by adding a new paragraph (b)(3) to read as follows:

§ 417.450 Effective date of coverage.

(b) *Exceptions.* * * *

(3) If a Medicare beneficiary enrolls during the coordinated open enrollment period specified in § 417.426(a)(2), the effective month of coverage is the following January 1.

8. In § 417.452, paragraph (d)(1) is revised and a new paragraph (f) is added to read as follows:

§ 417.452 Liability of Medicare enrollees.

(d) *Optional supplemental benefits plan.* (1) The organization may offer its Medicare enrollees a supplemental benefit plan to cover deductible and coinsurance amounts, or services not covered under Medicare, or both as provided in § 417.440(b)(2) and (3).

(f) *Limitation on liability for Medicare beneficiaries.* The liability of beneficiaries who are enrolled in an organization for all or any part of a year may not be increased through December 31 of that year, for those charges permitted under paragraphs (a) or (b) of this section. Organizations must notify Medicare enrollees prior to November 1 of benefit or premium changes that will be effective for the following calendar year.

9. In § 417.454, paragraph (b) is redesignated as (c), and a new paragraph (b) is added to read as follows:

§ 417.454 Charges to Medicare enrollees.

(b) Any organization may not increase the charges specified in paragraph (a)(1) and (2) of this section to Medicare beneficiaries who are enrolled in the organization for all or any part of a year, through December 31 of that year.

10. Section 417.474 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 417.474 Effective date and term of contract.

(c) The contract must specify the duration of its term. However, the initial term of the contract must be at least 12 months, but not more than 23 months; and any subsequent term must be for a period of 12 months, except as specified in paragraph (d) of this section.

(d) For contracts entered into or renewed after [effective date of the regulations] the term of the contract will extend for at least 12 months and extend through December 31.

11. Section 417.490 is revised to read as follows:

§ 417.490 Renewal of contract.

(a) A contract with an organization is renewed automatically for the next 12-month period (except as provided in § 417.474(d), unless HCFA or the organization decides not to renew in accordance with § 417.492.

(b) In special cases where the term of a contract is more than 12 months in accordance with § 417.474(d), the contract is renewed automatically effective January 1 for the next 12-month period unless HCFA or the organization decides to renew in accordance with § 417.492.

12. Section 417.494 is amended by revising paragraph (a)(3) to read as follows:

§ 417.494 Modification or termination of contract.

(a) *Modification or termination by mutual consent.* * * *

(3) Unless an organization's contract is terminated on December 31 for purposes of immediately beginning a new contract period on January 1 of a calendar year, an organization must notify its Medicare enrollees, and HCFA will notify the general public, at least 30 days before the termination date.

13. Section 417.584 is amended by revising paragraph (b)(2) to read as follows:

§ 417.584 Payment to organizations with risk contracts.

(b) *Determination of rate.* * * *

(2) HCFA furnishes each organization with its per capita rate of payment for a calendar year for each class of Medicare enrollees not later than August 1 of the preceding year.

14. Section 417.588 is amended by revising paragraph (b) to read as follows:

§ 41.588 Computation of adjusted average per capita cost (AAPCC)

(b) *Advance notice to the organization.* Before the beginning of a contract period, HCFA makes available to each risk contracting organization (or prospective risk contracting organization, if requested) the specific adjustment factors HCFA has used in determining the payment rates.

15. Section 417.590 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 417.590 Computation of the average of the per capita rates of payment.

(a) *Computation by the organization.* As indicated in § 417.584(b), prior to the start of each calendar year, HCFA determines an organization's per capita rate of payment for each class of Medicare enrollees for that calendar year. For purposes of determining an organization's required additional benefits (see § 417.592), an organization must compute a weighted average of these per capita rates of payment based on the organization's anticipated enrollment distribution. This computation must be done separately for Part A and Part B enrollees and Part B-only enrollees and is subject to HCFA's review and approval. If, in accordance with § 417.474(d), the contract period extends for more than one calendar year the organization must prepare separate computations for the months in each of the two calendar years in the contract period.

(c) *Contract periods in excess of 12 months.* If, in accordance with § 417.474(d), a contract period extends for more than one calendar year, paragraphs (a) and (b) of this section apply separately to the months in each of the two calendar years in the contract period.

16. Section 417.592 is amended by revising paragraph (d)(1), paragraph (d)(2) introductory text, and paragraph (e)(2) to read as follows:

§ 417.592 Determination of required additional benefits.

(d) *Notification to HCFA.* (1) No later than September 15 of the year preceding the calendar year for which HCFA's payment rates are announced, the organization must submit to HCFA its ACR proposal and the weighted average of its per capita rates of payment (as computed under § 417.590) for the following calendar year.

(2) If the proposed ACR is less than the average of the per capita rates of payment to be made at the beginning of the calendar year, the organization must provide HCFA with—

(e) *Exception.* * * *

(2) The reduction in the monthly payment must, over the course of the calendar year, be equal in value to the difference between the proposed ACR and the average of the per capita rates of payment, or meet the requirements of § 417.422(b)(1)(ii).

17. Section 417.594 is amended by revising paragraph (b)(5) and by adding a new paragraph (f) to read as follows:

§ 417.594 Computation of ACR

(b) *Initial rate calculation*

(5) The initial rate calculation must not carry forward any losses experienced by the organization during any months prior to the calendar year for which it is being calculated. The organization must submit supporting documentation to assure HCFA that rates do not include past losses but only premiums for the price of additional benefits and services of the upcoming contract period.

(f) *Coordinated open enrollment.* If, in accordance with § 417.474(d), a contract extends for more than one calendar year, paragraphs (a) through (e) of the section apply separately to the months in each of the two calendar years in the contract period.

18. Section 417.596(c)(1) is revised to read as follows:

§ 417-596 Establishment of a benefit stabilization fund.

(c) *Limitations on the amounts withheld.*—(1) *Limit per contract period.* Except as provided in paragraph (c)(3) of this section, HCFA will not withhold in a benefit stabilization fund more than 15 percent of the difference between an organization's ACR and the average of its per capita rates of payment as

determined under §§ 417.590 through 417.594 for a given calendar year.

19. In § 417.597, paragraph (a) introductory text and paragraphs (b), (c)(2), and (d) are revised, paragraph (b)(4) is removed, and paragraph (c) introductory text is republished to read as follows:

§ 417.597 Withdrawal from a benefit stabilization fund.

(a) *Notification to HCFA.* An organization's request to make a withdrawal from its benefit stabilization fund for use during a contract period must be made when the organization notifies HCFA of its ACR and the average of its per capita rates of payment. The request for withdrawal applies to the period covered by the ACR and average of its per capita rates of payment. In making its request the organization must—

(b) *Criteria for HCFA approval.* HCFA approves an organization's request for a withdrawal from its benefit stabilization fund only if—

(1) The organization's estimated average of its per capita rates of payment is less than that for the previous period;

(2) The proposed ACR is significantly higher than that for the previous period; or

(3) The organization's—

(i) Estimated revenue requirements in its proposed ACR for providing the additional benefits it is presently providing are significantly higher than the revenue requirements it earlier estimated were required for providing these benefits; and

(ii) Proposed ACR results in an additional benefits package that is less in total value than its existing ACR.

(c) *Basis for denial.* HCFA will not approve an organization's request for a withdrawal from its benefit stabilization fund if the withdrawal allows the organization to—

(2) Refinance losses that occurred prior to, or avoid losses in, the period for which the withdrawal is requested.

(d) *Form of payment.* Payment of monies withdrawn from a benefit stabilization fund is made, in equal parts, as an additional amount to the monthly advance payment made to the organization under § 417.584 during the period for which the withdrawal is requested.

(Catalog of Federal Domestic Assistance Program Nos. 13.773 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance.)

Dated: May 13, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved May 26, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-13125 Filed 6-8-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6927]

Proposed Flood Elevation Determinations; Colorado et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of

1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

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

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground: Elevation in feet (NGVD)
COLORADO	
DeBeque (town), Mesa County	
Rio Grande	
Approximately 1,200 feet downstream of County Road 44	*4909
Approximately 20 feet upstream of County Road 44	*4913
Approximately 1,360 feet upstream of County Road 44	*4918
Maps are available for review at Town Hall, 343 Minter Street, DeBeque, Colorado. Send comments to The Honorable James Lounds, Mayor, Town of DeBeque, Town Hall, 343 Minter Street, DeBeque, Colorado 81630.	
FLORIDA	
Center Hill (city), Sumter County	
Jumper Creek: Within community	*80
Maps available for inspection at the City Building, Center Hill, Florida. Send comments to The Honorable James H. Huett, Mayor, City of Center Hill, P.O. Box 38, Center Hill, Florida 33514.	
Umatilla (city), Lake County	
Lake Palm: Entire shoreline	*80
Lake Geneva: Entire shoreline	*76
Lake Ella: Entire shoreline	*71
Lake Mary: Entire shoreline	*71
Lake Enola: Entire shoreline	*71
Lake Umatilla: Entire shoreline	*70
Crescent Lake: Entire shoreline	*70
East Lake: Entire shoreline	*80
Lake Pearl: Entire shoreline	*80
Lake Owen: Entire shoreline	*70
Muscle Lake: Entire shoreline	*70
Lake Yale: Entire shoreline	*61
Maps available for inspection at the City Hall, Umatilla, Florida. Send comments to The Honorable Ed Permenter, Mayor, City of Umatilla, City Hall, P.O. Box 420, Umatilla, Florida 32784.	
IDAHO	
Cascade (city), Valley County	
North Fork Payette River:	
At southern-most corporate limit	*4727
Approximately 850 feet downstream of State Highway 55	*4730
Approximately 4,370 feet upstream of State Highway 55 (near Cascade Airport)	*4732
Approximately 140 feet upstream of State Highway 55 (near Cascade dam)	*4739
Maps are available for review at City Hall, 108 East Market, Cascade, Idaho. Send comments to The Honorable John Cloninger, Mayor, City of Cascade, P.O. Box 451, Cascade, Idaho 83611.	
McCall (city), Valley County	
North Fork Payette River:	
Approximately 1,450 feet downstream of West Lake Street/State Highway 55	*4,991
Approximately 880 feet downstream of West Lake Street/State Highway 55	*4,994
Maps are available for review at City Hall, 212 Park Street, McCall, Idaho.	
Send comments to The Honorable John J. Allen, Jr., Mayor, City of McCall, P.O. Box 721, McCall, Idaho 83638.	
INDIANA	
Johnson County (unincorporated areas)	
West Fork White River:	
About 2,500 feet downstream of county boundary	*647
Just downstream of county boundary	*681
Pleasant Run Creek:	

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Just upstream of County Line Road.....	*678	About 2.2 miles downstream of confluence of Cowskin Creek Cutoff.....	*1,207	LOUISIANA	
About 1,500 feet upstream of State Route 135.....	*725	Bluff Creek:		Varnado (village), Washington Parish	
Honey Creek:		Just upstream of county road (downstream of Oklahoma, Kansas, and Texas Railroad).....	*1,102	Pushepatapa Creek:	
At mouth.....	*657	Just downstream of county road (about 3.8 miles upstream of U.S. Highway 81).....	*1,120	Approximately 2,900 feet downstream of State Route 480-1.....	*114
Just downstream of 700 North Road.....	*774	Cowskin Creek:		Approximately 4,180 feet upstream of State Route 21.....	*127
Turkey Pen Creek:		About 2,800 feet upstream of Hillside Road.....	*1,227	Maps available for inspection at the City Hall, Pearsall Street, Varnado, Louisiana.	
At mouth.....	*680	About 400 feet upstream of county boundary.....	*1,233	Send comments to The Honorable Daniel Bernes, Mayor of the Village of Varnado, Washington County, P.O. Box 156, Varnado, Louisiana 70467.	
Just downstream of 800 North Road.....	*730	Fall Creek:		MAINE	
Messersmith Creek:		Just upstream of county road (downstream of Oklahoma, Kansas, and Texas Railroad).....	*1,104	Lovell (town), Oxford County	
At mouth.....	*664	About 2.1 miles upstream of U.S. Highway 81.....	*1,120	Kezar Lake:	
About 2.4 miles upstream of 500 West Road.....	*700	Euphrates Creek:		Entire shoreline of Kezar Lake within community.....	*385
Auburn Branch:		Just upstream of county road (about 1.3 miles downstream of Line Street).....	*1,195	At Lower Bay.....	*385
At mouth.....	*718	Just downstream of Atchison, Topeka, and Santa Fe Railway.....	*1,204	At Middle Bay.....	*385
Just downstream of Illinois Central Gulf Railroad.....	*731	Ninnescah River:		At Upper Bay.....	*385
Driftwood River:		Just upstream of Atchison, Topeka, and Santa Fe Railway.....	*1,200	At Saco River.....	*385
At county boundary.....	*658	About 1,500 feet upstream of county boundary.....	*1,257	At the Narrows.....	*385
At confluence of Big Blue River.....	*660	Slate Creek:		At Farrington Pond to approximately 50 feet downstream of its confluence with Sucker Brook.....	*385
Sugar Creek:		At confluence of Spring Creek.....	*1,211	At Sucker Brook from its confluence with Kezar Lake to approximately 0.3 mile downstream of Foxboro Road.....	*385
At mouth.....	*660	Just downstream of county road (upstream of confluence of Spring Creek).....	*1,218	At Kezar River from corporate limits to approximately 125 feet downstream of State Route 93.....	*385
About 1.32 miles upstream of Conrail.....	*686	Maps available for inspection at the County Engineer's Office, County Courthouse, Wellington, Kansas.		At Prays Brook from corporate limits to approximately 0.5 mile upstream of State Route 5.....	*385
Maps available for inspection at the Office of Planning and Zoning, Courthouse Annex, 86 West Court, Franklin, Indiana.		Send comments to The Honorable Wallace Wolf, Chairman, County Commissioners, Sumner County, County Courthouse, Wellington, Kansas 67152.		Maps available for inspection at the Town Hall, Lovell, Maine.	
Send comments to The Honorable William A. Ray, Chairman, County Board of Commissioners, Johnson County, Courthouse Annex, 86 West Court, Franklin, Indiana 46131.		Wellington (city), Sumner County		Send comments to The Honorable Gordon Eastman, Chairman of the Town of Lovell Board of Selectmen, Oxford County, Town Hall, P.O. Box 236, Lovell, Maine 04016.	
IOWA		Slate Creek:		Wayne (town), Kennebec County	
Elliott (city), Montgomery County		Just upstream of county road (upstream of confluence of Beaver Creek).....	*1,175	Wilson Pond: Entire shoreline within community.....	*245
East Nishnabotna River:		About 1.0 mile upstream of confluence of Spring Creek.....	*1,216	Dexter Pond: Entire shoreline within community.....	*246
Just upstream of State Highway 48.....	*1,070	Hargis Creek:		Berry Pond: Entire shoreline within community.....	*246
About 2,900 feet upstream from State Highway 48.....	*1,071	At mouth.....	*1,175	Androscoggin Lake: Entire shoreline within community.....	*286
Coe Creek:		Just downstream of Hargis Creek Dam.....	*1,209	Pocasset Lake: Entire shoreline within community.....	*289
About 0.38 mile upstream of mouth.....	*1,070	Hargis Creek Lake: Within community.....	*1,237	Pickeral Pond: Entire shoreline within community.....	*289
About 0.27 mile upstream of Burlington Northern railroad.....	*1,084	Rock Island Slough:		Loveloy Pond: Entire shoreline within community.....	*305
Tributary A:		At mouth.....	*1,189	Maps available for inspection at the Selectman's Office, Wayne, Maine.	
Just upstream of mouth.....	*1,070	Just downstream of Atchison, Topeka, and Santa Fe Railway.....	*1,189	Send comments to The Honorable Donald Gatti, Chairman of the Town of Wayne Board of Selectmen, Kennebec County, Town Offices, Pond Road, Wayne, Maine 02084.	
Just upstream of Burlington Northern railroad.....	*1,075	Just upstream of Atchison, Topeka, and Santa Fe Railway.....	*1,195	Wilton (town), Franklin County	
Maps available for inspection at the City Hall, 210 Main Street, Elliott, Iowa.		Just downstream of Harvey Avenue.....	*1,186	Wilson Stream:	
Send comments to The Honorable Robert E. Allen, Mayor, City of Elliott, City Hall, 210 Main Street, Elliott, Iowa 51532.		Just upstream of Harvey Avenue.....	*1,203	Approximately 3,270 feet downstream of Butterfield and Route 133 Bridge.....	*376
KANSAS		Just downstream of Lake Road.....	*1,222	Approximately 80 feet upstream of State Route 155 Bridge.....	*496
Caldwell (city), Sumner County		Just upstream of Lake Road.....	*1,227	Approximately 250 feet upstream of Canal Street Bridge.....	*576
Fall Creek:		About 4,300 feet upstream of Lake Road.....	*1,231	Maps available for inspection at the Town Manager's Office, Wilton, Maine.	
About 0.7 mile downstream of U.S. Highway 81.....	*1,106	Maps available for inspection at the Engineer's Office, City Hall, 317 South Washington, Wellington, Kansas.		Send comments to The Honorable Leslie Brown, Chairman of the Town of Wilton Board of Selectmen, Franklin County, Town Offices, P.O. Box 541, Wilton, Maine 04294.	
Just downstream of county road (about 0.9 mile upstream of U.S. Highway 81).....	*1,115	Send comments to The Honorable Gordon Tackett, Mayor, City of Wellington, City Hall, 317 South Washington, Wellington, Kansas 67152.		MICHIGAN	
Maps available for inspection at the City Hall, 14 West Central, Caldwell, Kansas.		KENTUCKY		Grant (township), Cheboygan County	
Send comments to The Honorable Thomas N. Henton, Mayor, City of Caldwell, City Hall, 14 West Central, Caldwell, Kansas 67022.		Knox County (unincorporated areas)		Black River:	
Oxford (city), Sumner County		East Fork Lynn Camp Creek:		About 1.9 miles downstream of confluence of Section Seven Creek.....	*612
Arkansas River:		At mouth.....	*1,071	About 0.8 mile upstream of confluence of Long Lake Creek.....	*616
About 1,600 feet downstream of Atchison, Topeka, and Santa Fe Railway.....	*1,145	Just downstream of Private Road (About 2,100 feet upstream of Indian Creek Road).....	*1,100	Twin Lakes: Along shoreline.....	*661
Just downstream of Atchison, Topeka, and Santa Fe Railway.....	*1,146	Lynn Camp Creek:			
Just upstream of Atchison, Topeka, and Santa Fe Railway.....	*1,151	About 1,200 feet downstream of confluence of East Fork Lynn Camp Creek.....	*1,070		
About 3,600 feet upstream of U.S. Highway 160.....	*1,156	About 0.5 mile upstream of Back Street.....	*1,089		
Maps available for inspection at the City Hall, 121 South Sumner, Oxford, Kansas.		Maps available for inspection at the County Courthouse, Barbourville, Kentucky.			
Send comments to The Honorable Richard Rodman, Mayor, City of Oxford, Box 337, Oxford, Kansas 67119.		Send comments to The Honorable Camell Sprinkles, Judge Executive, Knox County, P.O. Box 685, Barbourville, Kentucky 40906.			
Sumner County (unincorporated areas)					
Arkansas River:					
About 500 feet downstream of county boundary.....	*1,138				
Just downstream of Atchison, Topeka, and Santa Fe Railway.....	*1,146				
Just upstream of Atchison, Topeka, and Santa Fe Railway.....	*1,151				
About 1.7 miles upstream of U.S. Highway 160.....	*1,157				
Just upstream of State Highway 55.....	*1,167				

[illegible]

Source of flooding and location	# Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Eleva- tion in feet (NGVD)
About 3,200 feet downstream of Perry's Den Road.....	*827	Send comments to The Honorable Dewinda Ford, Mayor of the City of Lone Grove, Carter County, P.O. Box 304, Lone Grove, Oklahoma 73443.		Send comments to The Honorable Frank Kevech, Chairman of the Township of Fallowfield Board of Supervisors, Washington County, R.D. 1, Box 475, Charleroi, Pennsylvania 15022.	
At confluence of Collins Fork.....	*834				
Collins Fork:		OREGON		Fleetwood (borough), Berks County	
At mouth.....	*834	Mosier (city), Wasco County		Willow Creek:	
About 930 feet upstream of Renrock Road.....	*837	Rock Creek:		At downstream corporate limits.....	*404
Maps available for inspection at the County Courthouse, 836 Steubenville Avenue, Cambridge, Ohio.		Approximately 100 feet downstream of U.S. Route 30 (Interstate 84).....	*83	At upstream corporate limits.....	*470
Send comments to The Honorable Thomas J. Colson, President, Board of Commissioners, Guernsey County, County Courthouse, 836 Steubenville Avenue, Cambridge, Ohio 43725.		Approximately 30 feet downstream of Union Pacific Railroad.....	*90	Unnamed Tributary to Willow Creek:	
		Approximately 550 feet upstream of Rock Creek Road.....	*112	At downstream corporate limits.....	*371
		Approximately 1,200 feet upstream of Rock Creek Road (at southwest corporate limits).....	*136	Approximately 2 mile downstream of Farm Lane.....	*394
Lore-City (village), Guernsey County		Maps available for review at City Hall, Second and Oregon Streets, Mosier, Oregon. Send comments to The Honorable Hugh Preston, Mayor, City of Mosier, P.O. Box 456, Mosier, Oregon 97040.		Upstream corporate limits.....	*399
Leatherwood Creek: Within community.....	*820			Maps available for inspection at the Borough Building, 15 North Franklin, Fleetwood, Pennsylvania.	
Maps available for inspection at the Mayor's Home, Lore City, Ohio.		PENNSYLVANIA		Send comments to The Honorable Alexander Szoke, Council President of the Borough of Fleetwood, Berks County, 15 North Franklin, Fleetwood, Pennsylvania 19522.	
Send comments to The Honorable James Douth, Mayor, Village of Lore City, P.O. Box 69, Lore City, Ohio 43755.		Brady (township), Huntingdon County			
		Juniata River:		Franklin (township), Beaver County	
Quaker City (village), Guernsey County		Approximately .4 mile downstream of State Route 655.....	*585	Connoquenessing Creek:	
Leatherwood Creek:		Approximately .4 mile upstream of CONRAIL.....	*591	Approximately 2.7 miles downstream from State Route 65.....	*852
About 1,400 feet downstream of Pike Street.....	*868	Saddlers Creek:		At Fombell Road.....	*880
Just upstream of Private Drive.....	*875	Approximately .4 mile downstream of LR 31040.....	*660	At upstream corporate limits.....	*899
Smith Creek:		At upstream side of State Route 655.....	*763	Maps available for inspection at the Township Building, R.D. 1, Box 141, Fombell, Pennsylvania.	
At mouth.....	*869	Approximately .7 mile upstream of State Route 655.....	*810	Send comments to The Honorable G. William Blank, Chairman of the Township of Franklin Board of Supervisors, Beaver County, R.D. 1, Box 141, Fombell, Pennsylvania 16123.	
Just downstream of Crawford Lane.....	*875	Maps available for inspection at the Township Building on State Route 665, Mill Creek, Pennsylvania.			
Maps available for inspection at the Village Hall, Quaker City, Ohio.		Send comments to The Honorable Paul W. Brown, Chairman of the Township of Brady Board of Supervisors, Huntingdon County, HCR 61, P.O. Box #557, Mill Creek, Pennsylvania 17060.		Franklin (township), Greene County	
Send comments to The Honorable Edward Butler, Mayor, Village of Quaker City, 257 Fair Street, Quaker City, Ohio 43773.				South Fork Tenmile Creek:	
		Burgettstown (borough), Washington County		At downstream corporate limits.....	*901
Shelby (city), Richland County		Raccoon Creek:		Approximately 200 feet upstream of the upstream corporate limits.....	*968
Black Fork Mohican River:		At downstream corporate limits.....	*970	Maps available for inspection at the Township Building, 568 Rolling Meadows Road, Waynesburg, Pennsylvania.	
Just downstream of CSX railroad.....	*1,075	At upstream corporate limits.....	*994	Send comments to The Honorable Robert Anderson, Chairman of the Township of Franklin, Greene County, 568 Rolling Meadows Road, P.O. Box 752, Waynesburg, Pennsylvania 15370.	
Just upstream of the confluence of West Branch.....	*1,095	Maps available for inspection at the Borough Building, 113 Main Street, Burgettstown, Pennsylvania.			
Tubby Run:		Send comments to The Honorable Dean Allison, Council President of the Borough of Burgettstown, Washington County, 113 Main Street, #306, Burgettstown, Pennsylvania 15021.		Franklin (township), Huntingdon County	
At mouth.....	*1,088			Spruce Creek:	
Just downstream of Conrail.....	*1,091	Deer Lake (borough), Schuylkill County		At downstream corporate limits.....	*827
Just upstream of Conrail.....	*1,098	Pine Creek:		Approximately 2,000 feet upstream of T-549 bridge.....	*1,039
Just downstream of Vernon Road.....	*1,104	At downstream corporate limits.....	*475	Maps available for inspection at the Franklin Township Secretary Wayne Harpster's house, in the Village of Pennsylvania Furnace, Pennsylvania.	
Seltzer Park Creek:		At upstream corporate limits.....	*488	Send comments to The Honorable John B. Lake, Chairman of the Township of Franklin Board of Supervisors, Huntingdon County, R.D. #4, Tyrone, Pennsylvania 16686.	
At mouth.....	*1,089	Maps available for inspection at the Fire Hall, Ash Road, Deer Lake, Pennsylvania.			
Just downstream of Private Drive.....	*1,115	Send comments to The Honorable David B. Crouse, Council President of the Borough of Deer Lake, Schuylkill County, 308 Lake Front Drive, Deer Lake Orwigsburg, Pennsylvania 17961.		Greensboro (borough), Greene County	
Just upstream of Private Drive.....	*1,122			Monongahela River:	
About 400 feet upstream of Mansfield Avenue.....	*1,124	Fallowfield (township), Washington County		Approximately 765 feet downstream of the downstream corporate limits.....	*799
West Branch Bear Run:		Pigeon Creek:		At the upstream corporate limits.....	*800
About 2,080 feet upstream of State Street.....	*1,093	Approximately 0.5 mile downstream of State Route 581.....	*823	Maps available for inspection at the Borough Building, Greensboro, Pennsylvania.	
About 0.79 mile upstream of State Street.....	*1,102	Approximately 0.7 mile upstream of Monongahela-Bentleyville Road Bridge (upstream crossing).....	*910	Send comments to The Honorable Walter Watson, Council President of the Borough of Greensboro, Greene County, P.O. Box 38, Greensboro, Pennsylvania 15338.	
Hartman Bargheiser Ditch:		Maple Creek:			
At mouth.....	*1,079	Approximately 1.2 miles downstream of 1st Road Bridge upstream of corporate limits.....	*786	Greenwich (township), Berks County	
About 1,350 feet upstream of West Smiley Avenue.....	*1,097	Approximately 1.2 miles upstream of State Route 822.....	*954	Maiden Creek:	
West Branch:		Maps available for inspection at the Township Building, R.D. 1, Charleroi, Pennsylvania.		At downstream corporate limits.....	*327
At mouth.....	*1,094			At upstream corporate limits.....	*379
About 1,250 feet upstream of South Gamble Street.....	*1,097				
Maps available for inspection at the City Hall, 23 West Main Street, Shelby, Ohio.					
Send comments to The Honorable William Thompson, Mayor, City of Shelby, City Hall, 23 West Main Street, Shelby, Ohio 44875.					
OKLAHOMA					
Lone Grove (city), Carter County					
Taliaferro Creek:					
Approximately 1.6 miles downstream of Myall Road.....	*834				
At U.S. Route 70.....	*898				
Taliaferro Creek Tributary A:					
At confluence with Taliaferro Creek.....	*870				
Approximately 0.2 mile upstream of Kelly Lane.....	*886				
Wolf Creek:					
At confluence with Cottonwood Creek.....	*824				
At Newport Road.....	*892				
Maps available for inspection at the City Hall, Highway 70 East, Lone Grove, Oklahoma.					

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Mill Creek:		Mill Creek (borough), Huntingdon County		Maps available for inspection at the Township Municipal Building, 115 Stone Creek Road, Huntingdon, Pennsylvania.	
At confluence with Sacony Creek.....	*377	Juniata River:		Send comments to The Honorable John Wagner, Chairman of the Township of Oneida Board of Supervisors, Huntingdon County, R.D. #2, Huntingdon, Pennsylvania 16652.	
At upstream corporate limits.....	*426	Downstream corporate limits.....	*596		
Unnamed Tributary to Mill Creek:		Upstream corporate limits.....	*599		
At confluence with Mill Creek.....	*388	Maps available for inspection at the Borough Building, Valley Street, Mill Creek, Pennsylvania.			
At approximately 50 feet upstream from second crossing of State Route 737.....	*462	Send comments to The Honorable Kenneth Banks, President of the Borough of Mill Creek Council, Huntingdon County, HCR 61, Mill Creek, Pennsylvania 17060.			
Maps available for inspection at the Township Secretary's Office, R.D. 1, Box MM3, Lenhartsville, Pennsylvania.		Miller (township), Huntingdon County		Orwigsburg (borough), Schuylkill County	
Send comments to The Honorable John Queman, Jr., Chairman of the Township of Greenwich, Berks County, R.D. 1, Box MM3, Lenhartsville, Pennsylvania 19534-9801.		Standing Stone Creek:		Mahannon Creek:	
Juniata (township), Huntingdon County		Approximately 450 feet downstream L.R. 31112.....	*684	At downstream corporate limits.....	*535
Juniata River:		Approximately 0.64 mile upstream from L.R. 31056.....	*699	Upstream side of State Route 443.....	*580
Downstream corporate limits.....	*603	Maps available for inspection at the Huntingdon Township Secretary Patricia MacNeil's Home, L.R. 31042, Huntingdon, Pennsylvania.		Approximately 1,650 feet upstream of State Route 443.....	*600
Upstream corporate limits.....	*614	Send comments to The Honorable James Bookhamer, Jr., Chairman of the Township of Miller Board of Supervisors, Huntingdon County, R.D. #2, Box 273, Huntingdon, Pennsylvania 16652.		Maps available for inspection at the Municipal Building, 209 N. Warren Street, Orwigsburg, Pennsylvania.	
Raystown Branch Juniata River:				Send comments to The Honorable Clair Stoyer, Council President of the Borough of Orwigsburg, Schuylkill County, P.O. Box #128, Orwigsburg, Pennsylvania 17961.	
Confluence with Juniata River.....	*609				
Approximately 25 feet upstream from Township Route 428.....	*609	Millville (borough), Columbia County		Penn Forest (township), Carbon County	
Maps available for inspection at the Township Building, Piney Ridge Road, Juniata, Pennsylvania.		Little Fishing Creek:		Dilldown Creek:	
Send comments to The Honorable Charles A. Hall, Chairman of the Township of Juniata Board of Supervisors, Huntingdon County, R.D. #3, Huntingdon, Pennsylvania 16652.		At downstream corporate limits.....	*612	At confluence with Mud Run.....	*1,538
Kidder (township), Carbon County		At upstream corporate limits.....	*645	Approximately 1.3 miles upstream of confluence with Mud Run.....	*1,570
Black Creek:		Maps available for inspection at the Borough Building, State Street, Millville, Pennsylvania.		Mud Run:	
Approximately 370 feet downstream of Meckles Lane.....	*1,366	Send comments to The Honorable Millard Ludwig, President of the Borough of Millville, Columbia County, Main Street, Millville, Pennsylvania 17846.		Approximately 1,140 feet downstream of T-516 (North Old State Road).....	*1,479
Downstream of Interstate 80 Eastbound.....	*1,742	Minersville (borough), Schuylkill County		Approximately 1.4 miles upstream of State Route 903.....	*1,585
Dilldown Creek:		West Branch Schuylkill River:		Maps available for inspection at the Township Building, Star Route 903, Jim Thorpe, Pennsylvania.	
At confluence with Mud Run.....	*1,538	Approximately 1,155 feet downstream of Sunbury Street.....	*695	Send comments to The Honorable Alfred Feuerstein, Chairman of the Township of Penn Forest Board of Supervisors, Carbon County, Star Route, Jim Thorpe, Pennsylvania 18229.	
Approximately 1,100 feet upstream of dam #3.....	*1,570	Approximately 1,000 feet upstream of Conrail Railroad Bridge.....	*702		
Mud Run:		Maps available for inspection at the Municipal Building, #2 E. Sunbury Street, Minersville, Pennsylvania.		Ruscombsmanor (township), Berks County	
Approximately 600 feet downstream of confluence with Laurel Run.....	*1,479	Send comments to The Honorable James Mardini, Mayor of the Borough of Minersville, Schuylkill County, Municipal Building, Minersville, Pennsylvania 17954.		Willow Creek:	
At confluence of Dilldown Creek.....	*1,538	New Sewickley (township), Beaver County		At downstream corporate limits.....	*474
Maps available for inspection at the Municipal Building, L.R. 13039, Lake Harmony, Pennsylvania.		Brush Creek:		Approximately 30 feet upstream of Pumphouse Road.....	*570
Send comments to The Honorable Charles Goetz, Chairman of the Township of Kidder Board of Supervisors, Carbon County, Municipal Building, P.O. Box 374, Lake Harmony, Pennsylvania 18624.		Just upstream of the Pennsylvania Turnpike.....	*924	Unnamed Tributary A to Willow Creek:	
Lenhartsville (borough), Berks County		At upstream corporate limits.....	*973	At confluence with Willow Creek.....	*476
Maiden Creek:		Maps available for inspection at the Township Building, R.D. 1, Box 12, Miller Road, Rochester, Pennsylvania.		Approximately 20 feet upstream of T-897.....	*548
At approximately 100 feet below downstream corporate limits.....	*368	Send comments to The Honorable Dwayne Rapi, Chairman of the Township of New Sewickley Board of Supervisors, Beaver County, R.D. 1, Box 12, Miller Road, Rochester, Pennsylvania 15074.		Unnamed Tributary B to Willow Creek:	
At approximately 140 feet above upstream corporate limits.....	*370	Oneida (township), Huntingdon County		At corporate limits.....	*479
Maps available for inspection at the Borough Building, 18 Willow Street, Lenhartsville, Pennsylvania.		Standing Stone Creek:		Approximately 980 feet upstream of corporate limits.....	*503
Send comments to The Honorable Kerry Fink, President of the Borough of Lenhartsville, Berks County, 18 Willow Street, Lenhartsville, Pennsylvania 19534.		Approximately 430 feet downstream of downstream crossing of State Route 26.....	*629	Little Manatawny Creek:	
Marion (township), Beaver County		Approximately 0.35 mile upstream of downstream crossing of State Route 26.....	*631	At corporate limits.....	*486
Connoquenessing Creek:		At the confluence of Chilcoat Run.....	*645	Approximately 2,370 feet upstream of corporate limits.....	*515
At downstream corporate limits.....	*870	Approximately 0.2 mile upstream of upstream crossing of State Route 26.....	*647	Unnamed Tributary to Little Manatawny Creek:	
At upstream side of CONRAIL bridge.....	*892	Murray Run:		At downstream corporate limits.....	*483
At upstream corporate limits.....	*900	Approximately 0.11 mile downstream of State Route 26.....	*680	Approximately 1,590 feet upstream of corporate limits.....	*525
Maps available for inspection at the Township Secretary's residence, R.D. 2, New Brighton, Pennsylvania.		At upstream corporate limits.....	*691	Maps available for inspection at the Township, Secretary Rose Ellen Mull's Office, R.D. 3, Box 3386, Fleetwood, Pennsylvania.	
Send comments to The Honorable Thomas George, Chairman of the Township of Marion Board of Supervisors, Beaver County, R.D. 2, Fombell, Pennsylvania 16123.		Chilcoat Run:		Send comments to The Honorable Earl Matthias, Chairman of the Township of Ruscombsmanor Board of Supervisors, Berks County, R.D. 5, Box 5467, Fleetwood, Pennsylvania 19522.	
		At confluence of Standing Stone Creek.....	*645	South Manheim (township), Schuylkill County	
		Approximately 50 feet upstream of L.R. 31048.....	*654	Bear Creek:	
				At downstream corporate limits.....	*473
				At upstream corporate limits.....	*628
				Maps available for inspection with Ms. Dawn Hoffman, Township Secretary, R.D. 1, Box 207 A, Auburn, Pennsylvania.	
				Send comments to The Honorable Chris Ingaglio, Chairman of the Township of South Manheim, Schuylkill County, R.D. 2, Box 274, Auburn, Pennsylvania 17922.	

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Spruce Creek (township), Huntingdon County		Lake View (town), Dillon County		Pherrins River:	
<i>Juniata River:</i>		<i>Bear Swamp Creek:</i>		At confluence with Island Pond Brook.....	*1,173
Approximately 1,800 feet downstream of the confluence with Spruce Creek.....	*761	About 1,030 feet downstream of 1st Avenue.....	*75	Upstream side of second crossing of State Route 114.....	*1,181
Approximately 2,250 feet upstream of State Route 45.....	*769	About 300 feet upstream of 4th Avenue.....	*82	Maps available for inspection at the Town Manager's Office Vault, Town Hall, Island Pond, Vermont.	
<i>Spruce Creek:</i>		Maps available for inspection at the Town Hall, Lake View, South Carolina.		Send comments to The Honorable Joseph Wade, Chairman of the Town of Brighton Board of Selectmen, Essex County, Town Hall, Pleasant Street, Island Pond, Vermont 05846.	
At confluence with Juniata River.....	*765	Send comments to The Honorable Robert T. Smith, Mayor, Town of Lake View, Town Hall, P.O. Box 824, Lake View, South Carolina 29563.			
Approximately 0.6 mile upstream of T-602.....	*827				
Maps available for inspection at the Township Secretary's House, R.D. #1, Box 97, Tyrone, Pennsylvania.		TEXAS		VIRGINIA	
Send comments to The Honorable Sidney N. Harner, Chairman of the Township of Spruce Creek Board of Supervisors, Huntingdon County, Spruce Creek, Pennsylvania 16883.		Burleson County (unincorporated areas)		Culpeper (town), Culpeper County	
Union (township), Huntingdon County		<i>Davidson Creek:</i>		<i>Mountain Run:</i>	
<i>Juniata River:</i>		At confluence with Davidson Creek Tributary 1.....	*314	Approximately 2,000 feet downstream of Southern Railway.....	*349
Approximately 0.6 mile downstream of abandoned bridge.....	*587	Approximately .5 mile upstream of confluence with Copperas Hollow Creek.....	*332	At U.S. Route 522 (Evans Street).....	*358
Approximately 0.4 mile upstream of CONRAIL.....	*591	<i>Davidson Creek Tributary 1:</i>		At upstream corporate limits at Lake Pelham Dam.....	*366
Upstream of State Route 829.....	*601	At confluence with Davidson Creek.....	*314	Maps available for inspection at the Town Engineer's Office, 118 West Davis Street, Culpeper, Virginia.	
Maps available for inspection Township Secretary Robert Fisher's home, Township Road #424 (off Hill Street), Union, Pennsylvania.		Approximately 0.5 mile upstream of Southern Pacific Railroad.....	*364	Send comments to The Honorable Guilford W. Griffin, Manager of the Town of Culpeper, Culpeper County, 118 West Davis Street, Culpeper, Virginia 22701.	
Send comments to The Honorable Sidney M. Heaster, Chairman of the Township of Union Board of Supervisors, Huntingdon County, R.D., Mapleton Depot, Pennsylvania 17052.		<i>Copperas Hollow Creek:</i>		Richmond County, unincorporated areas	
Warriors Mark (township), Huntingdon County		Approximately 130 feet downstream of most downstream corporate limits.....	*340	<i>Rappahannock River:</i> Entire shoreline within community.....	*7
<i>Warriors Mark Run:</i>		Approximately .4 mile upstream of the most upstream corporate limits.....	*383	Maps available for inspection at the Clerk's Office Record Room, County Office Building, Second Floor, 100 Court Street, Warsaw, Virginia.	
Approximately 3,580 feet downstream of Burkett Road.....	*1,031	<i>Elm Branch:</i>		Send comments to The Honorable Stephen K. Whiteway, Richmond County Administrator, P.O. Box 956, Warsaw, Virginia 22572.	
Approximately 270 feet upstream of State Route 550.....	*1,098	Approximately 450 feet downstream of confluence with Elm Branch Tributary 1.....	*339		
<i>Little Juniata River:</i>		Approximately .5 mile upstream of County boundary.....	*396	Urbanna (town), Middlesex County	
At downstream corporate limits.....	*814	<i>Elm Branch Tributary 1:</i>		<i>Rappahannock River:</i>	
At downstream side of Legislative Route 07030.....	*856	At confluence with Elm Branch.....	*341	Entire shoreline within community.....	*7
Maps available for inspection at the Warriors Mark Township Building (behind Larry Smith's house), Warriors Mark, Pennsylvania.		At County boundary.....	*371	Shoreline at the confluence of Urbanna Creek and Rappahannock River.....	*7
Send comments to The Honorable L. Stewart Neff, Chairman of the Township of Warriors Mark, Huntingdon County, Warriors Mark, Pennsylvania 16877.		<i>Old River Tributary 1:</i>		Maps available for inspection at the Town Hall, Urbanna, Virginia.	
		Approximately 1,240 feet downstream of confluence with Old River Tributary #2.....	*226	Send comments to The Honorable Carl Classen, Administrator of the Town of Urbanna, Middlesex County, P.O. Box 179, Urbanna, Virginia 23175.	
		Approximately 1.0 mile upstream of the upstream most County boundary.....	*246		
		Maps available for inspection at the Burleson County Judge's Office, Buck Street, Caldwell, Texas.		WEST VIRGINIA	
		Send comments to The Honorable Woods A. Caperton, Burleson County Judge, County Courthouse, P.O. Box 766, Caldwell, Texas 77836.		City of Paden (city), Tyler and Wetzel Counties	
		Sonora (city), Sutton County		<i>Ohio River:</i>	
		<i>Dry Devil's River:</i>		At downstream corporate limits.....	*634
		Approximately 135 feet downstream of downstream corporate limits.....	*2,116	At upstream corporate limits.....	*635
		Approximately 0.56 mile upstream of upstream crossing of U.S. Route 277.....	*2,137	Maps available for inspection at the City Hall, Paden City, West Virginia.	
		<i>Lowrey Draw:</i>		Send comments to The Honorable John Ice, Mayor of the City of Paden City, Tyler and Wetzel Counties, City Hall, P.O. Box 11, Paden City, West Virginia 26159.	
		At confluence with Dry Devil's River.....	*2,123		
		Approximately 0.36 mile upstream of upstream corporate limits.....	*2,138		
		<i>Meadow Creek:</i>			
		At confluence with Lowrey Draw.....	*2,131		
		At upstream corporate limits.....	*2,144		
		Maps available for inspection at the City Hall, 201 N. E. Main, Sonora, Texas.			
		Send comments to The Honorable Billy Gosney, Mayor of the City of Sonora, Sutton County, 201 N. E. Main, Sonora, Texas 66950.			
		VERMONT			
		Brighton (town), Essex County			
		<i>Island Pond Brook:</i>			
		At confluence with Pherrins River.....	*1,173		
		Downstream side of Island Pond Road.....	*1,179		
		<i>Island Pond:</i> For its entire shoreline.....	*1,175		

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
California	San Diego County (unincorporated areas).	Sweetwater River (above reservoir).	Approximately 3,340 feet downstream of the confluence of Harbison Canyon Creek.	*481	*481
			Just upstream of third bridge in the Singing Hills Golf Course.	*452	*453
			Just upstream of Oak Drive.....	*395	*397
			Just upstream of Steel Canyon Road.....	*350	*351
			Just downstream of Campo Road—Highway 94.	*309	*316
			Just above the Sweetwater Authority Ford.....	*255	*256
			Just above the Sweetwater River Reservoir.....	*248	*248
		Mexican Canyon Creek overflow.	Approximately 2,100 feet downstream of Jamul Drive.	None	*443
			At confluence with Mexican Canyon Creek.....	None	*414
		Mexican Canyon Creek.....	Approximately 240 feet upstream of footbridge...	None	*590
			Just upstream of Jamul Drive.....	None	*491
			At confluence with Mexican Canyon Creek Overflow.	None	*414
		Harbison Canyon Creek.....	At the confluence with the Sweetwater River.....	None	*361
			Approximately 620 feet upstream of Patrick Drive.	None	*1,038
			Approximately 30 feet upstream of Noakes Street.	None	*950
			Approximately 320 feet upstream of Gladiola Lane.	None	*900
			Approximately 50 feet downstream of Warfield Way.	None	*860
			Approximately 20 feet upstream of Collier Way...	None	*814
			Approximately 1,980 feet downstream of Collier Way.	None	*760
			Approximately 3,630 feet downstream of Collier Way.	None	*680
			Approximately 5,110 feet upstream of Dehesa Road.	None	*620
			Approximately 2,180 feet upstream of Dehesa Road.	None	*590
		San Diego River.....	Approximately 90 feet upstream of Dehesa Road.	None	*570
			Approximately 10,500 feet upstream of Riverford Bridge.	None	*397
			Approximately 7,500 feet upstream of Riverford Bridge.	None	*393
			Approximately 3,400 feet upstream of Riverford Bridge.	None	*375
			Approximately 40 feet upstream of Riverford Bridge.	None	*368
			Approximately 1,600 feet downstream of Riverford Bridge.	None	*360
			Approximately 2,100 feet downstream of Riverford Bridge.	None	*354
		Santa Maria Creek (San Pasqual Valley area).	Approximately 1,700 feet upstream of Bandy Canyon Road.	None	*400
			Approximately 90 feet upstream of Bandy Canyon Road.	None	*398
		Santa Ysabel Creek.....	Approximately 2,880 feet upstream of State Highway 78.	None	*433
			Approximately 180 feet upstream of State Highway 78.	None	*426
			Approximately 2,540 feet downstream of State Highway 78.	None	*413
			Approximately 23,570 feet upstream of Interstate Highway 15.	None	*356
			Approximately 21,760 feet upstream of Interstate Highway 15.	None	*350
		South Fork Moosa Canyon Creek.	Approximately 230 feet upstream of Live Oak....	None	*539
			Just upstream of Oak Shadows Drive.....	None	*525
			Just downstream of Lawrence Welk Drive.....	None	*506
			Approximately 3,850 feet downstream of Old Castle Road.	None	*475
			Approximately 2,065 feet downstream of Old Castle Road.	None	*460
		Box Canyon (alluvial fan).....	Approximately 110 feet upstream of Old Castle Road.	None	*440
			Approximately 1,680 feet upcanyon from USGS Gaging Station # 10255800 in a northeast direction.	None	# 3

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 860 feet upcanyon from USGS Gaging Station # 10255800 in a northeast direction.	None	# 2
		Unnamed canyon (alluvial fan)	Approximately 1,700 feet upcanyon from the intersection of sections 23, 24, 25, and 26 in T9S and R5E in a southwest direction.	None	# 3
			Approximately 1,000 feet upcanyon from the intersection of sections 23, 24, 25, and 26 in T9S and R5E in a southwest direction.	None	# 2
		El Vado Canyon (alluvial fan)....	Approximately 2,100 feet upcanyon from the western corner of the intersection of sections 6 and 7 in T10S and R6E in a north-west direction.	None	# 2
			Approximately 1,400 feet downcanyon from the western corner of the intersection of sections 6 and 7 in T10S and R6S in a south-east direction.	None	# 1
		Henderson Canyon (alluvial fan).	Approximately 12,300 feet upcanyon from the intersection of Montezuma Road and Catarina Drive in a northwest direction.	None	# 3
			Approximately 9,000 feet upcanyon from the intersection of Montezuma Road and Catarina Drive in a northwest direction.	None	# 2
			Approximately 6,000 feet upcanyon from the intersection of Montezuma Road and Catarina Drive in a northwest direction.	None	# 1
		Borrego Palm Canyon (alluvial fan).	Approximately 2,000 feet downcanyon from USGS Gaging Station # 10255810 in a southeast direction.	None	# 4
			Approximately 4,500 feet upcanyon from the State Park Headquarters in a western direction.	None	# 3
		Fire Canyon (alluvial fan).....	Approximately 8,750 feet upcanyon from the intersection of Whip Drive and Verbena Drive in a western direction.	None	# 2
			Approximately 6,500 feet upcanyon from the intersection of Whip Drive and Verbena Drive in a western direction.	None	# 1
		Hellhole Canyon (alluvial fan) ...	Approximately 12,000 feet upcanyon from the intersection of Palm Canyon Drive and Diamonds Road in a southwest direction.	None	# 3
			Approximately 7,000 feet upcanyon from the intersection of Palm Canyon Drive and Diamonds Road in a southwest direction.	None	# 2
		Dry Canyon (alluvial fan).....	Approximately 9,000 feet upcanyon from the intersection of Broken Arrow Road and Tilting Drive in a southwest direction.	None	# 2
			Approximately 6,500 feet upcanyon from the intersection of Broken Arrow Road and Tilting Drive in a southwest direction.	None	# 1
		Culp-Tubb Canyon (alluvial fan).	Approximately 6,500 feet upcanyon from the intersection of Country Club Road and Wagon Road in a southwest direction.	None	# 4
			At the Tubb Canyon Spring Dike.....	None	# 3
			Approximately 1,000 feet east of the southern tip of the Tubb Canyon Spring Dike.	None	# 2
			At the intersection of Country Club Road and Borrego Springs Road.	None	# 1
		Coyote Canyon (alluvial fan).....	Approximately 2,000 feet downcanyon from USGS Gaging Station # 10255800 in a southeast direction.	None	# 6
			Approximately 9,000 feet downcanyon from USGS Gaging Station # 10255800 in a southeast direction.	None	# 5
			Approximately 14,000 feet downcanyon from USGS Gaging Station # 10255800 in a southeast direction.	None	# 4
		Coalescent alluvial fan areas: Coyote Canyon, Box Canyon or unnamed canyon (alluvial fans).	At the intersection of sections 31 and 32 in T9S and R6E with Sections 5 and 6 in T10S and R6E.	None	# 3
			At the intersection of sections 4, 5, 8 and 9 in T10S and R6E.	None	# 2
			At the intersection of Santa Rosa Drive and Di Giorgio Road.	None	# 1
			At the Borrego Valley Airport.....	None	# 1

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			At the intersection of sections 13, 14, 23, and 24 in T10S and R6E.	None	#1
		Borrego Palm Canyon, Fire Canyon, or Hellhole Canyon (alluvial fans).	At the intersections of Lasy S Drive and St. Vincent Drive.	None	#2
			At the intersection of Whip Drive and Ocotillo Circle.	None	#2
			At Christmas Circle	None	#2
		Dry Canyon or Culp-Tubb Canyon (alluvial fans).	At the intersection of Country Club Road and Tilting Drive.	None	#2
			At the intersection of County Club Wagon Road.	None	#2
			At the intersection of De Anza Road and Country Club Road.	None	#1

Maps are available for review at the San Diego County Department of Public Works, 5555 Overland Avenue, San Diego, California 92123.

Send comments to Mr. Brian Bilbray, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Suite 335, San Diego, California 92101.

Idaho	City of Caldwell, Canyon County.	Boise River	Approximately 300 feet downstream of Union Pacific Railroad.	*2,349	*2,348
			Just upstream of Chicago Street	*2,351	*2,352
			Just downstream of U.S. Highway 84	*2,355	*2,355
			Approximately 2,800 feet upstream of Plymouth Street at corporate limit.	*2,364	*2,365
			Approximately 6,225 feet upstream of Plymouth Street.	*2,367	*2,367

Maps are available for review at the City Engineers Office, City of Caldwell, 621 Cleveland Street, Caldwell, Idaho.

Send comments to The Honorable Peter B. Cowles, Mayor, City of Caldwell, P.O. Box 1177, Caldwell, Idaho 83606.

Indiana	Town of Waterloo, DeKalb County.	Cedar Creek	Just upstream of County Route 28	None	*891
			Just downstream of Center Street	None	*889

Maps available for inspection at the Clerk Treasurer's Office, Town Office, 385 West Walnut, Waterloo, Indiana.

Send comments to The Honorable Stephen B. Walter, Town Board President, Town of Waterloo, Town Office, 385 West Walnut, Waterloo, Indiana 46793.

Kentucky	City of Carrollton, Carroll County.	Ohio River	About 546 miles below Headwaters at Pittsburgh.	None	*468
			About 542 miles below Headwaters at Pittsburgh.	None	*469
		Kentucky River	At mouth	None	*468
			About 1.2 miles above mouth	None	*468

Maps available for inspection at the City Hall, Carrollton, Kentucky.

Send comments to The Honorable Bill Welty, Mayor, City of Carrollton, City Hall, P.O. Box 156, Carrollton, Kentucky, 41008.

Massachusetts	Weymouth, town, Norfolk County.	Hingham Bay	At Lower Neck Cove	*12	*13
			At Parnell Street and Fort Point Road	*12	*13
			At east side of Slate Island	*12	*15
			At southwest side of Slate Island	*12	*15
			At north side of Slate Island	*12	*17
			At Rose Cliff	*12	*17
			At north side of Grape Island	*12	*18
			At Lower Neck	*12	*18
			At Upper Neck	*12	*18
		Weymouth Fore River	At approximately 300 feet south of Paomet Road and Wessagusett Road intersection.	*12	*14
			At approximately 120 feet inland of shoreline by the intersection of Shore Drive and Ocean Avenue.	*12	*15
			Entire shoreline along Regatta Road from approximately 100 feet east of Bradmere Way extended to approximately 100 feet north-east of North Street extended.	*12	*17
		Weymouth Back River	At approximately 1,050 feet downstream of the end of Broad Beach Road.	*12	*15

Maps available for inspection at the Planning Department, Town Hall, 75 Middle Street, Weymouth, Massachusetts.

Send comments to The Honorable Brian McDonald, Chairman of the Town of Weymouth Board of Selectmen, Norfolk County, Town Hall, 75 Middle Street, Weymouth, Massachusetts 02188.

North Carolina	City of Lumberton, Robeson County.	Lumber River	About 1.8 miles downstream of Chippewa Street.	*113	*113
			About 2,300 feet downstream of confluence of Bear Swamp.	*127	*127
		Jacob Swamp	About 900 feet upstream of SR 2289	*114	*114
			Just upstream of Contempora Drive	None	*124
		Little Jacob Swamp	At mouth	*114	*114

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of SR 2513	None	*125
		Five Mile Branch	At mouth	*124	*124
			Just downstream of Meadow Road	*126	*138
		Meadow Branch	At mouth	*124	*124
			Just upstream of Fayetteville Road	*133	*133
		Pole Cat Branch	At mouth	*126	*126
			Just upstream of Fayetteville Road	*133	*130
		Ivey Branch	At mouth	*125	*125
			Just upstream of Fayetteville Road	*130	*133
		Saddletree Swamp	At mouth	*124	*124
			About 3,500 feet downstream of SR 1529	None	*129
		Saddletree Swamp Tributary	At mouth	None	*124
			Just downstream of SR 1544	None	*142

Maps available for inspection at the City Hall, Lumberton, North Carolina.

Send comments to The Honorable David Weinstein, Mayor, City of Lumberton, P.O. Box 1388, Lumberton, North Carolina 28359.

Ohio	City of Cambridge, Guernsey County	Wills Creek	About 3,500 feet downstream of Wills Creek Valley Road	*794	*794
			About 600 feet downstream of Interstate 70	*800	*800
		Leatherwood Creek	At mouth	*800	*800
			About 1,300 feet upstream of Vocational Road	*801	*801
		Crooked Creek	About 1.0 mile upstream of Bloomfield Road	None	*796
			Just downstream of Glenn Highway	None	*797

Maps available for inspection at the City Hall, 1131 Steubenville Avenue, Cambridge, Ohio.

Send comments to The Honorable C. Charles Schaub, Mayor, City of Cambridge, City Hall, 1131 Steubenville Avenue, Cambridge, Ohio 43725.

Vermont	Hartford, town, Windsor County	Connecticut River	At downstream corporate limits (extended)	*345	*346
			At upstream corporate limits (extended)	*388	*387
		White River	At confluence with the Connecticut River	*354	*355
			At upstream corporate limits	*408	*401
		Ottawaquechee River	At Quechee Dam	*575	*574
			At upstream corporate limits	*656	*657

Maps available for inspection at the Town Hall, 15 Bridge Street, White River Junction, Vermont.

Send comments to The Honorable Ralph Lehman, Manager of the Town of Hartford, Windsor County, 15 Bridge Street, White River Junction, Vermont 05001.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 3, 1988.

[FR Doc. 88-12951 Filed 6-8-88; 8:45 am]

BILLING CODE 6718-21-M

Notices

Federal Register

Vol. 53, No. 111

Thursday, June 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 3, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Foreign Agricultural Service Application for Import Licenses for Dairy Products under Section 22 FAS-922, 923, 923A, 924 and 924A Recordkeeping: Annually Individuals or households; Businesses or other for-profit; Federal agencies or employees; 800 responses; 864 hours; not applicable under 3504(h) Richard P. Warsack (202) 447-5270

• Forest Service Application for Temporary Employment FS-6100-23 Annually Individuals or households; 12,000 responses; 6,000 hours; not applicable under 3504(h) Penny McGill (703) 235-2046

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-13010 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Oil and Gas Leasing in the Bridger-Teton National Forest, Wyoming

AGENCY: Forest Service, USDA.

ACTION: The Department of Agriculture, Forest Service, is revising its March 24, 1988, Federal Register Notice of Intent to prepare an Environmental Impact Statement (EIS) for oil and gas leasing in the Teton-Bridger East portion of the Bridger-Teton National Forest. The Bridger-Teton National Forest is located in Fremont, Park, Teton, Sublette, and Lincoln Counties, Wyoming.

SUMMARY: Oil and gas leasing in the West Bridger portion of the National Forest was the subject of a recently completed Environmental Assessment. Information contained in that document and the comments we received indicate that the proposed action may have a significant effect on the environment; therefore, there is a need to continue the National Environmental Policy Act (NEPA) process and prepare an EIS. Because an EIS is currently being prepared for the Teton-Bridger East portion of the Forest, the West Bridger EIS and the Teton-Bridger East EIS will be combined. This will result in a single Forest-wide EIS for oil and gas leasing in the Bridger-Teton National Forest. Public involvement (scoping) was previously undertaken concerning oil and gas leasing in both portions of the National Forest. The significant issues

which were identified, will be incorporated into the ongoing NEPA process. J.S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, Ogden, Utah 84401 is the responsible official. The Bureau of Land Management (BLM), Department of the Interior, will be invited to participate as a cooperating agency.

The Draft EIS will be available for review about January 1989. Public meetings on the draft document will be held following distribution and an announced review period. Notice of the date, time, and place for the public meetings will be announced in the local media. The Final EIS is scheduled to be completed about July 1989.

ADDRESS: Questions concerning the proposed action and EIS or information about public meeting dates and places should be directed to Al Koschmann, Forest Engineer, Bridger-Teton National Forest, Box 1888, Jackson, Wyoming 83001, Phone (307) 733-2752.

DATE: Any comments concerning the proposed action should be sent to the above address by July 11, 1988.

T. A. Roederer,

Deputy Regional Forester Resources.

Date: May 31, 1988.

[FR Doc. 88-12927 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-11-M

Intent to Prepare an Environmental Impact Statement on Activities Including Timber Harvest and Road Construction/Reconstruction; Kootenai National Forest, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed Forest Service activities including timber harvest and road construction/reconstruction in the Yaak River drainage of the Three Rivers District, Kootenai National Forest, Lincoln County, Montana. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they

may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 1, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to James F. Rathbun, Forest Supervisor, Kootenai National Forest, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to John Righter, District Ranger, Three Rivers Ranger District, Troy Ranger Station, 1437 N. Hwy 2, Troy, MT 59935.

SUPPLEMENTARY INFORMATION: The Forest Service will prepare an environmental impact statement to determine the environmental effects, including cumulative impacts, of proposed Forest Service activities over the next 3 to 5 years that includes timber harvest and road construction/reconstruction in the Yaak River drainage of the Three Rivers District. In preparing the Environmental Impact Statement, the Forest Service will identify and consider a range of alternatives for the proposed actions. One of these will be no further timber harvest or road construction/reconstruction. Other alternatives will examine and consider various levels of timber harvest and road construction/reconstruction.

The Ninth Circuit Court of Appeals on May 11, 1988 (amended decision) held that an environmental assessment prepared for the reconstruction of the Porcupine-Sullivan portion of the Yaak 92 road failed to comply with NEPA. The court enjoined the Forest Service from further road reconstruction and timber sales. The court specifically found that road reconstruction, timber sales, and feeder roads were connected actions that must be analyzed. The court concluded that connected actions and unrelated, but reasonably foreseeable, future actions may result in cumulative effects and must be considered. This Environmental Impact Statement will assess the impacts of the proposed actions, any connected actions and the cumulative impacts of past, present and reasonably foreseeable actions in the area of the proposed actions.

The Environmental Impact Statement will consider the proposed actions based upon the management direction in the Kootenai National Forest Land and Resource Management Plan: The Kootenai National Forest Land and Resource Management Plan was

completed in September of 1987. The Plan establishes Forestwide Management direction as well as more specific Management Area direction across the forest. The Yaak area contains a number of management areas, including some that allow for timber harvest, while maintaining or enhancing other resources, such as wildlife habitat. One Forestwide Management goal is to harvest the maximum amount of high risk lodgepole pine marketable, in order to minimize losses from the mountain pine beetle.

James F. Rathbun, Supervisor of the Kootenai National Forest is the responsible official.

Public participation will be important during the analysis. The first point of public participation is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identifying additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies and task assignments.

Public scoping has occurred during several environmental assessments that were prepared for portions of the Yaak drainage during the last few years. Public scoping also occurred during preparation of the Forest Land and Resource Management Plan. Issues were developed during those efforts. Due to these recent public scoping efforts, no additional public scoping meetings are planned at this time. However, to promote timely participation, the Forest Service is and will be seeking public participation during the scoping process through announcements in the local papers, posters at public establishments in the Yaak drainage, and mailings to known interested parties.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public

review by October, 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Yaak River drainage participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978) and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by February 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

John Hughes,

Deputy Regional Forester.

[FR Doc. 88-12926 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-11-M

Vegetation Management Program In the Southern Region; Revised Notice of Intent to Prepare Three Environmental Impact Statements

The revised Notice of Intent revises the Notice of Intent published in the *Federal Register* on Page 32345, September 11, 1986. Changes have been made in the scheduled dates for public review of the three Draft EIS's, and in completion dates for the three Final EIS's. The revised Notice of Intent follows:

The Department of Agriculture, Forest Service, will prepare three Environmental Impact Statements (EIS's) for proposed vegetation management programs in three areas of the Southern Region: Appalachian Mountains, Ozark and Ouachita Mountains, and Coastal Plain/Piedmont. These documents will cover National Forest System lands within the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and a portion of West Virginia.

The analyses for the EIS's will consider a range of alternative Vegetation Management Programs. The alternatives will identify the methods to be used in treating the vegetation and the activities that involve vegetation management. Methods under consideration include herbicide application, mechanical and manual techniques, prescribed burning, and grazing as a biological tool. Activities that involve treatment of vegetation include site preparation for natural and artificial reforestation, pre-commercial thinning, timber stand improvement, conifer and hardwood release, pre-harvest treatment for oak regeneration, wildlife habitat improvement, right-of-way maintenance (roads, trails, utilities and railroads), range improvement and fuels treatment. These activities are performed by USDA Forest Service personnel, cooperators, and contractors.

Federal, State and local agencies, any affected Indian tribes, and other individuals or organizations who may be interested in or affected by the decision will be invited by letter to participate in the process. Other interested publics may send comments as indicated below. No formal hearings or public meetings are planned at this time. The process for each of the three areas will include:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the Regional and local issues to be considered and analyzed.
3. Determining the disciplines needed on the interdisciplinary team.

4. Focusing on social, physical, and biological issues for each EIS.

5. Identifying cooperating agencies.

6. Identifying groups or individuals interested or affected by the decisions.

John E. Alcock, Regional Forester, Southern Region, Atlanta, Georgia is the responsible official.

The Draft EIS on the Coastal Plain/Piedmont Forest and National Grasslands should be available for public review by May 1988, with the Final EIS scheduled to be completed by October 1988.

The Draft EIS for the Appalachian Forest should be available for public review by November 1988, with the Final EIS scheduled to be completed by April 1989. The Draft EIS for the Ozark/Ouachita Forests should be available for public review by January 1989, with the Final EIS scheduled to be completed by June 1989.

Written comments and suggestions concerning the analyses, the EIS's, or EIS process should be sent to Regional Forester, Southern Region, 1720 Peachtree Road NW., Atlanta, Georgia 30367.

Questions about the proposed actions and EIS's should be directed to Stephen McCorquodale, Vegetation Management EIS Team Leader, Southern Region, Phone (404) 347-7076.

Date: June 2, 1988.

John E. Alcock,

Regional Forester, Region 8.

[FR Doc. 88-12924 Filed 6-8-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 7109-01, 7109-2]

Actions Affecting Export Privileges; Forson Elektronische Geraete GmbH

In the matter of Josef Forstner, individually and doing business as FORSON ELEKTRONISCHE GERAETE GmbH, Respondents, [Docket Numbers 7109-01, 7109-2].

Summary

Pursuant to the May 3, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is hereby affirmed in part and modified in part, Joseph Forstner, both individually and doing business as Forson Elektronische Geraete GmbH, both with an address of Breitenfurter Strasse 183, A-1120 Vienna, Austria, is denied all U.S. export privileges for a period of ten (10) years from the date hereof.

Order

On May 3, 1988, the Administrative Law Judge entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge with the following exceptions:

1. The word "Indefinite" in Footnote 5 of the order is hereby deleted. Denial periods imposed under § 387.8 of the Regulations have a maximum length of 5 years and thus are more accurately "limited" rather than indefinite under the generally accepted definition of that term.

2. The word "indefinite" in lines 7 and 16 of paragraph VI of the order is deleted. See discussion in 1. above.

This constitutes final agency action in this matter.

Date: June 2, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

United States Department of Commerce, Office of Administrative Law Judge

Decision and Order

In the Matter of Josef Forstner individually and doing business as Forson Elektronische Geraete GmbH Respondents, [Docket Nos. 7109-01, 7109-02].

Appearance for Respondent: Dr. Eric Agstner, A-1010 Wien, Tuchlauben 11, Austria.

Appearance for Agency: Anthony Hicks, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, Washington, DC 20230.

Preliminary Statement

On July 20, 1987, the Office of Export Enforcement (OEE), United States Department of Commerce ("Agency"), issued a charging letter to Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH (hereinafter collectively referred to as "Respondent").¹ The

¹ When the charging letter was issued, the Office of Export Enforcement was a part of the International Trade Administration of the U.S. Department of Commerce. On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), the Office of Export Enforcement was moved to the newly created Export Administration.

charging letter alleges that Respondent violated Sections 387.5 of the Export Administration Regulations (15 C.F.R. Parts 368-399), ("the regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401-2420 (1982)), ("the Act").²

Respondent's answer to the initial charging letter, dated August 25, 1987, was filed with this office on August 31, 1987. Counsel for Respondent acknowledges in his "Preliminary Position on Issues and Procedure", dated September 24, 1987, that Respondent did not request a hearing. Pursuant to Section 388.14 of the regulations, this matter is adjudicated on the record without a hearing. Both Agency Counsel and Respondent made written submissions to the record, which closed on January 25, 1988.³

Facts

There has been no apparent dispute over the essential facts in this proceeding. On or about December 20, 1982, Respondent ordered a U.S.-origin computer (Govt. Exh. 1), controlled under Commodity Control Number 1565A for reasons of national security (Govt. Exh. 2), from the Austrian subsidiary of a U.S. parent corporation (Govt. Exh. 1). To fill the order, the Austrian company obtained the computer from the U.S. parent's Dutch subsidiary, which shipped the computer to the Austrian subsidiary under the U.S. parent's distribution license, No. V1013-002 (Govt. Exh. 3). Technische Gewerbliche Abendschule (TGA), a technical commercial engineering school, located in Vienna, Austria, was listed on the purchase invoice as the ultimate consignee (Govt. Exh. 1). The computer was delivered to TGA on June 23, 1983 (Govt. Exh. 4). The computer was signed for by the director of the school (Govt. Exh. 13, 14).

On or about May 19, 1983, Respondent ordered another computer from the same Austrian subsidiary (Govt. Exh. 5). This computer was also controlled for reasons of national security (Govt. Exh. 2). The Austrian subsidiary filled the

order in the same manner, except that Fuchs GmbH, an Austrian company also located in Vienna, was listed on the purchase invoice as the ultimate consignee of the computer (Govt. Exh. 5, 8). On or about November 21, 1983, the computer was delivered to Fuchs GmbH (Govt. Exh. 5, 7).

Despite the delivery of the two computers, which were delivered to TGA and Fuchs GmbH, respectively, the Respondent never actually sold the computers to either institution nor relinquished control over either system (Govt. Exh. 8, 13, 14, 16). During May, 1984, a U.S. Department of Commerce Export Control Attache in Vienna, Austria attempted to conduct an onsite post-shipment check to verify the end use of these computers. During this check, he was unable to locate either of the computers at Fuchs GmbH or TGA.⁴ He tried, with the assistance of the Austrian officials, to contact Respondent but was unable to discuss the matter with the Respondent directly (Govt. Exh. 8).

Through the Austrian officials, Respondent revealed to the Export Control Attache, that he had sold the computers to others, but would not reveal the identity of the end-users. Subsequently, on December 13, 1984, the Export Control Attache served interrogatories on the Respondent asking him to reveal the location of the two computers (Govt. Exh. 11, 12). Respondent never replied to the interrogatories.⁵

⁴ When the Attache contacted the officials at TGA, he was informed that no computer had ever been ordered for purchase. When he tried to contact officials at Fuchs GmbH, he learned that the company, represented as an installment subcontractor of Forson Elektronische Gerate GmbH, did not appear to exist. It was not registered in the commercial listings, and the address it had been recorded at was a run-down apartment building (Govt. Exh. 8).

⁵ For this failure to respond to the Agency's interrogatories (Govt. Exh. 8), Respondent has been placed on the Table of Denied Parties by the order of April 10, 1985 (Govt. Exh. 10). Such Indefinite Denial Orders have routinely been issued where a party declines to respond to inquiries respecting the status or disposition of controlled items. Respondent has asked, in both his answer to the charging letter and his submission for the record, to be removed from this list.

By the order of the hearing commissioner, on April 10, 1985, (50 Fed. Reg. 15206, April 17, 1985), and Sections 387.8(c) and 388.19(b) of the regulations, Respondent may have this denial order vacated by either answering the interrogatories and producing the requested material, or making a showing of good cause for failure to do so, or Respondent may wait until the order terminates automatically, five years from the date it went into effect.

Discussion

Respondent is charged with concealing the location of U.S.-origin equipment, directly or indirectly, from an official of the U.S. government in the course of an investigation instituted under the Act. The Agency alleges that the whereabouts of the two computers is a fact material to the investigation. Both of the computers are controlled for reasons of national security and it is important for the Agency to know their whereabouts, because of the possibility that they may have been exported to a prescribed destination (Govt. Submission at 7). Such end-user inquiries and verification are a legitimate part of the export control process.

Respondent claims that the Order of April 10, 1985, punishes him for the same actions that this proceeding seeks to address, and therefore this proceeding is unfair. He also asserts that under Austrian law, he does not have to answer the Agency's interrogatories or produce the requested information.

The Order of April 10, 1985 was an indefinite denial order which placed the Respondent on the Table of Denied parties for failing to answer the interrogatories given to him by the Agency, thus violating Section 387.8 of the regulations. This section makes failures to (1) answer interrogatories, (2) respond to requests for admission, or (3) produce documents, violations punishable by denying export privileges to persons for up to five years, or until they comply with Agency's request or show good cause for not doing so, whichever is sooner.

In the proceeding before this Tribunal, the Respondent is now charged with concealing material facts in the course of an investigation, thus violating Section 387.5 of the regulations. This section of the regulations makes it a violation for any person to conceal any material fact to an official of a United States agency or through any other person or foreign official in the course of an investigation instituted under the Act.

The Respondent is correct in his assertion that the same continued conduct on his part is the basis for both proceedings. The Order of April 10, 1985 was an interim measure and the action taken here is the follow-up procedure.

Respondent asserts that because of superceding Austrian law, he need not comply with the United States regulations. He argues that the re-exportation of these computers is controlled by both Austrian law as well as the U.S. regulations (Resp.

² The alleged violation occurred on or about December 7, 1984 (Govt. Exh. 8). At that time, the regulations were continued in effect by an Executive Order issued under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (1982)). Between March 31, 1984 and July 12, 1985, the regulations were continued in effect by Executive Order 12470 (49 Fed. Reg. 13099, April 3, 1984).

³ Originally, by Order of the undersigned Administrative Law Judge, dated October 17, 1987, the record in this matter was to close on December 19, 1987. However this time period was extended on requests from both Counsel for Respondent and Counsel for the Agency.

Submission at 2). Respondent claims that after receiving the equipment, both TGA and Fuchs GmbH decided not to keep the computers. Respondent claims that under Austrian law, any subsequent sale was not subject to the regulations and, therefore, he is not required to reveal the present location of the computers.

Respondent argues that revealing the whereabouts of these computers to the Agency contradicts his rights under Austrian law and cites Article 305 of subparagraph 4 of the Austrian code of civil procedure.⁶ Respondent further cites the Supreme Court of Austria, which, he says, has interpreted this section of the code as entitling an individual to refuse presentation of documents if they are classified as trade or business secrets.⁷

These assertions are not accepted. Persons involved in exports from the United States, particularly of restricted items, pledge to furnish end-user data. The Export Administration Act of 1979, as amended, and the regulations promulgated thereunder, comprise the law which governs the export and reexport of goods and technology from the United States.⁸ The Act applies

extraterritorially and authorizes the U.S. executive branch to restrict re-exports of U.S.-origin goods and technology to foreign countries. The United States has asserted its right to protect end-user controls. This has resulted in the exercise of powers imposing licensing requirements and other restrictions on purchasers of U.S.-origin goods and technology, even where the goods or technology are outside the United States, and without regard to how many times the goods or technology have changed hands. If the Respondent wishes to conduct trade with the United States, he must submit to these regulations as he represented he would do at the time these exports were approved.

Respondent relies on his characterization of the sale of the computers from TGA and Fuchs Geraete to him as two separate and unique transactions, and these provisions of Austrian law, in asserting that he is privileged from responding to the Agency's interrogatories. This reliance is misplaced. Respondent has presented nothing to controvert the evidence produced by the Agency, which established that there were no sales to either TGA or Fuchs GmbH. The evidence produced, including a statement by Mr. Leitner of TGA, indicates that both of these transactions were merely transparent schemes (Govt. Exh. 14).⁹ Thus, the Austrian law cited does not apply.¹⁰

⁹ In his statement Mr. Leo Leitner, the director of TGA, the Technical Trade Evening School in Vienna, stated that he was contacted by Respondent Forstner in May, 1983. Respondent offered to install a computer in the school at that time for demonstration purposes (this being a common offer). This agreement was to entail the loan of the computer, cost free, which Mr. Leitner believed to be consistent with a promotional effort to build good will with the school. The equipment was put on display at the school in mid-June and never actually put into operation. It was removed, at Mr. Leitner's request before the end of the school year on July 1983. Mr. Leitner further stated that he never indicated that the school was purchasing the computer, nor discussed any details of the arrangement with Respondent, with the manufacturer (Govt. Exh. 14).

¹⁰ In making his own determination that a foreign law should govern, Respondent has not shown that the law upon which he applies bars the production of the items the Agency is seeking, nor has he submitted any evidence that he has even made an effort to secure permission from authorities to make the information available. See *United States v. Vetco Inc.*, 691 F.2d 1281, 1289 (9th Cir. 1981), *Societe Internationale pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 205 (1958).

It is also noted that the U.S. official conducting the inquiry, appears to have done so with the approval and assistance of the Austrian government (Govt. Exh. 8).

Protective Orders are routinely issued in these proceedings where appropriate. If Respondent felt that the information the U.S. officials needed for their investigation was a truly confidential business secret, the release of which would damage his pecuniary or business interests, he could and should have requested such an order. An abrupt and continued refusal to cooperate with the Agency officials was, and is, inappropriate.¹¹

Findings

Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, violated the regulations, in that Respondent concealed material facts from the Agency during the course of an investigation regarding the sale of two computers, in violation of § 387.5 of the regulations. These computers were U.S.-origin goods controlled under section 5 of the Act for national security reasons, and were not sold to companies named in the original export documents as the end users, but instead went to some other destination, which Respondent refuses to disclose.

Based on the above findings of fact, I conclude that an Order denying U.S. export privileges for a period of 10 years to Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete, GmbH, from the date a final order becomes effective in this proceeding, is appropriate. The final order in these proceedings will constitute the final administrative disposition and action, on these charges, against Respondent.

Order

I. For a period of 10 years from the date of the final Agency action,

¹¹ Even if Austrian law was accepted to possibly grant a privilege to this individual, Respondent has made no showing that the information he seeks to withhold is so privileged. No information has been presented to this Tribunal to support a finding that the answers to the Agency's interrogatories are in fact a properly protected commercial or business secret. "Responsibility for deciding the question of privilege properly lies in an impartial independent judiciary, not in the party claiming the privilege and not in a party litigant." *NLRB v. Capitol Fish Co.*, 294 F.2d 868, 876 (5th Cir. 1961).

It does not appear that the merits of the claims of privilege respecting documents relating to this case be addressed without reference to the documents, or at least some specific description of them. Counsel may not arrogate to themselves the determination of the validity and applicability of their claimed basis for asserting privilege. It may only be determined after some consideration of the contents of documents by an independent reviewer. Simply states, if an exporter cannot or will not comply with the end user and other requirements they may not participate in the export of U.S.-origin goods.

⁶ Respondent translates this provision:

§ 305 The presentation of other documents can be refused:

1.
2.
3.

4. If the party, by presenting the document, would (either) violate an officially recognized duty of secrecy, of which it has not validly been resolved, or a secret of arts or business;

5.

(Resp. Submission at 3, citing *Zivilprozeßordnung, ZPO*)

⁷ This decision is translated:

"To business-secrets also belong information about business conclusions and business conditions; this applies especially also to reasonable sources of purchase, which defendant is not obliged to name. He was therefore entitled to refuse presentation of relevant documents at all"

(Resp. Submission at 3, citing "Decision of the Austrian Supreme Court, 14.10.1969, File number 4 Ob 346/69" see *Österreichische Blätter*, Mai-Juni 1970, page 78).

Respondent further relies on the following definition of business secrets:

"Commercial or enterprise secrets are facts, in relation to the company, of commercial or technical character, which are only known to a certain and limited number of persons and not accessible, or only with difficulties, to others, which also, according to the will of those entitled shall not be spread except among those informed, which finally make commercial reason to the owner of the business or enterprise not to disclose them."

(Resp. Submission at 3, citing *Österreichische Juristenzeitung*, volume 22, page 673 of November 13, 1987)

⁸ See *The Extraterritorial Application of National Laws* (D. Lange, G. Born 1987) at 21.

Respondent Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, Breitenfurter Strasse 183, A-1120 Vienna, Austria and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) as a party or as a representative of a party to a validated export license application;

(ii) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) in obtaining or using any validated or general export license or other export control document;

(iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization

from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. By Order of April 10, 1985 (50 Fed. Reg. 15206, April 17, 1985), as modified on June 4, 1985 (50 Fed. Reg. 24558, June 11, 1985) Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, and others were denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities and technical data. This indefinite denial order was to remain in effect until the Respondents furnished responsive answers to the written interrogatories and produced the requested reports, or until they gave adequate reason for their failure or refusal to do so or until five years from the date of that Order, whichever occurred first. Upon approval, this Order will constitute such final disposition of the administrative proceeding initiated by the agency as a result of its investigation relating to the matters which gave rise to the indefinite denial order. The indefinite denial Order of April 5, 1985 (50 Fed. Reg. 15206, April 17, 1985), as modified by Order of June 4, 1985 (50 Fed. Reg. 24558, June 11, 1985) will be superceded and revoked when this Order becomes effective. Review of the record relating to the Respondents originally named in that Order reflect that all have now been addressed. The following entries will be deleted from the said Table:

Joseph Forstner, individually and doing business as Forson Elektronische Geraete GmbH, Breitenfurterstrasse 183, A-1120 Vienna, Austria

Fuchs GmbH, a/k/a F.F. Elektronische Geraete GmbH, Schoenbrunnerstrasse 237, A-1120, Vienna, Austria
F.F. Elektronische Geraete GmbH, a/k/a/ Fuchs GmbH,
Schoenbrunnerstrasse 237, A-1120, Vienna, Austria.

From the effective date of this Order it alone will be the basis for any entry on the Table of Denied Orders until - modified (15 C.F.R. Part 388 (Supp. No. 1, 1987)).

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. § 2412(c)(1)).

Date: May 3, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88-12916 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Caribbean Basin Business Promotion Council; Change in Meeting Location

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: This is the second meeting of the Caribbean Basin Business Promotion Council (Council). The Council consists of 28 private sector members and eight U.S. Government representatives and was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice will also be forwarded to the interagency CBI Task Force.

Time and Place

June 17, 1988 from 8:00 a.m. to approximately 5:30 p.m. The meeting will take place in Room "C" at the Sands Hotel, Highway 187, Isla Verde, Carolina, Puerto Rico. The Sands Hotel is approximately a five-minute drive from the Luis Munoz Rivera International Airport.

Proposed Agenda

1. Discussion of Puerto Rico's Caribbean Development (936) Program as it relates to economic development in the Caribbean Basin.
2. Investment climate reviews of Barbados, Costa Rica, Dominica, Grenada, Jamaica, and St. Lucia provided by country government representatives.
3. Analysis of CBI investment survey conducted by the U.S. Department of Commerce.

4. Review of Council's work plan and country visit assignments by Council members.

5. Discussion on Congressional and Administration outlook for CBI.

Public Participation

The meeting will be open to public participation and a period will be set aside for oral comments or questions, beginning on or around 5:00 p.m. on June 17. Any member of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. Seating is available to the public.

FOR FURTHER INFORMATION CONTACT:

Paul D. Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3020, Washington, DC 20230. Telephone (202) 377-0703. Copies of the minutes of the Council's meeting will also be available at the above office 30 days after the meeting.

Date: June 3, 1988.

Gordon Studebaker,

Director, CBI Center.

[FR Doc. 88-12982 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-FP-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Committee will convene separate public meetings as follows:

Council—will convene its 63rd regular meeting at the Hotel Pierre, De Diego Avenue, Santurce, Puerto Rico, on June 30, 1988, at 9 a.m., to discuss the status of fishery management plans (FMPs) under development; the habitat issue; regulatory impact review and other issues related to the Magnuson Fishery Conservation and Management Act 601 Standards, as well as discuss other administrative matters. The public meeting will adjourn at approximately 5 p.m., and reconvene July 1, 1988, from 9 a.m. to noon if necessary.

Administrative Committee—will convene at the Council's office (address below), June 29, 1988, at 2 p.m., to consider an auditors' and the Liaison Funds reports, as well as other matters related to the Council's regular operations. The public meeting will adjourn at 6 p.m.

For further information contact the Caribbean Fishery Management Council,

Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918-2577; (809) 753-4926.

Date: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-12988 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene separate public meetings at The Reach Hotel, Simonton Street at the Ocean, Key West, FL, as follows:

Council: will convene July 12, 1988, at 8:30 a.m., to discuss committee reports; review the stock status of the butterfish fishery; discuss revisions to the regulatory impact review for Shrimp Amendment 4; review and make recommendations on the Tortugas Shrimp Sanctuary Closure (public testimony beginning at 1:30 p.m.); discuss and approve draft Amendment 3 to the Mackerel Fishery Management Plan (FMP), and review regulatory alternatives in the Reef Fish Amendment 1 Options Paper, selecting preferred alternatives. The Council will recess at 5 p.m. On July 13 at 8:30 a.m., the Council will continue discussion of the Reef Fish Amendment 1 Options Paper and recess at 5 p.m. On July 14 at 8:30 a.m., the Council will review regulatory alternatives in the Mackerel Amendment 4 Options Paper, selecting preferred alternatives, and review reports of the Marine Fisheries Advisory Committee and South Atlantic Fishery Management Council reports. The Council will adjourn at 5 p.m.

Committees: will convene July 11, 1988, at 1 p.m., with the Administrative Policy Committee, followed by meetings of the Habitat and Budget Committees. Adjournment is at 5 p.m. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone (813) 228-2815.

Date: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-12989 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will convene a public meeting on June 20, 1988, at 11 a.m., at the Council's office (address below), to compile technical information to be included in Amendment #4 to the Pacific coast groundfish fishery management plan. In addition, the GMT will review information on landings of groundfish by the commercial groundfish industry and projections of catch rates for the remainder of 1988. Other issues pertaining to management of the groundfish fishery may be discussed also. The public meeting will adjourn on June 22.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221-6352.

Date: June 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-12990 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will convene separate public meetings, June 21-24, 1988, at the Holiday Inn on Salter Path Road, Atlantic Beach, NC, to discuss large pelagics, king and Spanish mackerel, snapper grouper, and other fishery management business. In addition, the Council's Executive/Finance Committee will convene to develop the Council's 1989 budget. A detailed agenda will be available to the public on or about June 6, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: June 6, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and
Management, National Marine Fisheries
Service.

[FR Doc. 88-12991 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Plan Monitoring Team (PMT) will convene a public meeting on June 14, 1988, at 1 p.m., at the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Honolulu Laboratory, 2570 Dole Street, Honolulu HI, to: (1) review remaining final modules for inclusion in the bottomfish 1987 annual report, and status of the report; (2) review team management recommendations for inclusion in the annual report and submission to the Western Pacific Council, and (3) discuss other PMT business, i.e. review draft fishing power criteria for the Northwestern Hawaiian Islands bottomfish vessels, review Bottomfish Amendment 2 proposed rules, etc. The public meeting will adjourn at 3 p.m.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: June 6, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and
Management, National Marine Fisheries
Service.

[FR Doc. 88-12992 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals; Issuance of Permit; Dr. Howard E. Winn

On March 7, 1988, notice was published in the *Federal Register* (53 FR 7224) that an application had been filed by Dr. Howard E. Winn, Graduate School of Oceanography, University of Rhode Island, Kingston, Rhode Island 02881, for a scientific research permit to tag endangered marine mammals in the Western North Atlantic Ocean.

Notice is hereby given that on May 20, 1988, as authorized by the provisions of the Marine Mammal Protection Act of

1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Suite 805, Washington, DC 20235; and

Director, Northeast Region, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, Massachusetts 01930.

Nancy Foster,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 88-12973 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Minco Products, Inc.; Correction

In the notice which appeared on Monday, May 23, 1988, Vol. 53, No. 99, at page 18331, FR doc. 88-11485:

(1) In line 4 & 5 delete "joint owner of the invention," and;

(2) In line 19 delete", and to Minco".

Douglas J. Champion,

Associate Director, Office of Federal Patent
Licensing, National Technical Information
Service, U.S. Department of Commerce.

[FR Doc. 88-12933 Filed 6-8-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for a Proposed Beach Erosion Control Project in the Vicinity of Great Egg Harbor Inlet and Peck Beach, Ocean City, NJ

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is an evaluation of the alternatives for the prevention of further erosion of the Ocean City, New Jersey beach and the improvement of navigation through the adjacent Great Egg Harbor Inlet. The purpose of any consequent work would be to stabilize the shoreline at a predetermined width, to provide shore property protection, and to lessen the hazards of inlet navigation.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DSEIS should be addressed to Dr. Teruo Sugihara, (215) 597-4833, U.S. Army Corps of Engineers, U.S. Custom House, CENAP-PL-E, 2nd and Chestnut Streets, Philadelphia, PA 19106-2991.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed document evaluates a study area approximately 8 miles in length and includes the land between Surf Road and 50th Street in Ocean City. This area is subject to daily and storm wave action which create severe beach erosion problems. Hazardous navigation conditions exist in Great Egg Harbor Inlet due to shallow shoals in the channel. These shoals are causing incident waves to break making negotiation of the channel by boaters difficult in most sea conditions and nearly impossible during storms.

b. The authority for the proposed project is the committee resolution of December 15, 1970 under the provisions of section 201 of Pub. L. 89-298 as presented in H.D. 91-160 and as reauthorized with a provision for construction of separable elements under section 831(1) of the Water Resources Development Act of 1986 (Pub. L. 99-662).

2. Alternatives

In addition to the no action alternative the alternatives considered for the

correction of the beach erosion and of the hazardous channel navigation fall into structural and non-structural categories. The structural measures to correct the beach erosion include bulkheads, seawall, revetments, offshore breakwaters, groins, beach restoration/nourishment, and beach sills. Nonstructural measures are flood insurance, development regulations, and land acquisition. The structural measures to improve channel navigation are jetties and periodic dredging of the inlet. Non-structural measures include waiting for the tides, periodic channel survey and marking, boater relocation, regulated usage, and improving navigation aids.

3. Scoping

a. Initial studies which consist of a Environmental Statement (September 25, 1970), a Draft Navigation Impact Study (October 18, 1976 filing date in the Federal Register), and a Beach Erosion Control—Navigation Study (completed in December 1985 for the New Jersey Department of Environmental Protection) were prepared by the Corps of Engineers for this study area.

b. The anticipated scoping process will involve preliminary coordination with Federal, State, and local agencies. Participation of the general public and other interested parties and organizations will be invited by means of a public notice. Based on the input of these agencies and the interested public, a decision to have a formal scoping meeting will be made.

c. The significant issues and concerns that have been identified include the impacts of the project on aquatic biota, water quality, intertidal habitat, shallow water habitat, cultural resources, and economics.

4. Availability

It is estimated the DSEIS will be made available to the public in December 1988.

Robert L. Callegari,

Chief, Planning Division.

[FR Doc. 88-12934 Filed 6-8-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on the Role of

Unmanned Vehicles in Support of Naval Warfare will meet on June 30 through July 1, 1988. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on June 30; and commence at 8:00 a.m. and terminate at 4:00 p.m. on July 1, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on remotely-operated and autonomous vehicle technology. The agenda will include technical briefings and discussions addressing current state-of-the-art in remotely-operated and autonomous vehicle technology, and the operational utility of such platforms in support of naval warfare objectives. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Date: June 6, 1988.

Jane M. Virga,

Lieutenant, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 88-12947 Filed 6-8-88; 8:45 am]

BILLING CODE 3610-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 11, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 6, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: NEW

Title: The Evaluation of the Rehabilitation Services

Administration Training Program for Interpreters for Deaf Individuals

Frequency: One time only

Affected Public: Individuals or households; State or local governments; non-profit institutions

Reporting Burden:

Responses: 985

Burden Hours: 908

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: This study will collect information from individuals, deaf referral centers/agencies, Vocational Rehabilitation offices, and Interpreter Training Programs under the Rehabilitation Act of 1973, as amended. The Department will use the information to determine the need for interpreters for deaf persons and to evaluate the effectiveness of Federal funded training programs.

Office of Special Education and Rehabilitative Services

Type of Review: Extension

Title: List of Hearing Officers Recordkeeping

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 0

Burden Hours: 0

Recordkeeping:

Recordkeepers: 16,000

Burden Hours: 1,600

Abstract: This list is used by State public agencies receiving Education of Handicapped Act, Part B funds. The information is used to inform interested parties of the training and abilities of persons serving as impartial hearing officers.

Office of Special Education and Rehabilitative Services

Type of Review: NEW

Title: Data Collection Forms for Evaluation of Independent Living Services

Frequency: Annually

Affected Public: State or local governments; non-profit institutions

Reporting Burden:

Responses: 170

Burden Hours: 2,252

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: These forms will be used by Independent Living Centers that have been funded under Title VII,

Part B of the Rehabilitation Act of 1973, as amended. The Department will use the information to determine grantee compliance with Independent Living Center standards.

[FR Doc. 88-13014 Filed 6-8-88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.025A]

Notice Reopening the Closing Date for Transmittal of Applications for State and Multi-State Projects for Deaf-Blind Children and Youth Under the Services for Deaf-Blind Children and Youth Program for Fiscal Year 1988

Purpose: On November 18, 1987, the Office of Special Education and Rehabilitative Services (OSERS), published a notice in the Federal Register at 52 FR 44333 establishing February 19, 1988 as the deadline for the transmittal of applications for FY 1988 awards under the Services for Deaf-Blind Children and Youth program, Priority 1: State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025A). The competition is being reopened to accommodate requests from certain States that are being served presently through a continuation grant to a Multi-State Deaf-Blind Service Project and wish to apply independently or that are receiving no services.

Deadline for Transmittal of Applications: July 12, 1988.

Applications Available: June 10, 1988

Available funds: \$400,000

Estimated Average Award: \$100,000

Project Period: Up to 36 months

Applicable Regulations: (a) The regulations for the Services for Deaf-Blind Children and Youth Program, 34 CFR Part 307; (b) the Education Department General Administrative Regulations (EDGAR), 34 CFR 74, 75, 77, 78 and 79; and (c) the annual funding priority for this program.

For Applications or Information: Severely Handicapped Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3511-M/S 3409), Washington, DC 20202. Telephone (202) 732-1177.

Program Authority: 20 U.S.C. 1422.

Dated: June 6, 1988.

L. Michael Herrell,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88-13015 Filed 6-8-88; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3394-1]

Prevention of Significant Deterioration of Air Quality (PSD); Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between November 1, 1987 and April 30, 1988, the New York State Department of Environmental Conservation (NYSDEC) issued four final determinations and the New Jersey Department of Environmental Protection (NJDEP) issued two final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT:

Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the NYSDEC and the NJDEP have made final determinations relative to the sources listed below:

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, CN 027 Trenton, New Jersey 08625

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these

determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit

within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to

later judicial review in civil or criminal proceedings for enforcement.

William J. Muszynski,
Acting Regional Administrator.

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Metal Container Corp.....	New Windsor, New York	Installation of a beverage can surface coating facility...	NYSDEC	PSD Permit Approval	11/30/87
Bergen County	Ridgefield, New Jersey	Construction of four 715 tons per day municipal waste incinerators, four lime silos, a ferrous metal shredder, and a 20,000 gallon oil storage tank.	NJDEP	PSD Permit Approval	12/23/87
WES Gloucester Company.....	West Deptford, New Jersey	Construction of two 287.5 tons per day municipal waste incinerators, one lime storage silo, and ash handling area.	NJDEP	PSD Permit Approval	1/14/88
Eastman Kodak, Co.....	Rochester, New York	Construction of a photographic film coater	NYSDEC	PSD Non-Applicability Determination	2/17/88
TBG Cogeneration Corporation	Bethpage, New York	Construction of a 49.9 MW cogeneration facility consisting of two natural gas turbine generators and one steam turbine generator.	NYSDEC	PSD Permit Approval	4/3/88
Albany Cogeneration Associate.....	Colonie, New York	Construction of a 26 MW gas turbine and deactivation of four existing boilers.	NYSDEC	PSD Non-Applicability Determination	4/13/88

[FR Doc. 88-12961 Filed 6-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00262; FRL-3394-5]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, July 18 and Tuesday, July 19, 1988, beginning at 8:30 a.m. each day and ending by 3:30 p.m. on Tuesday, July 19.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. (703) 436-1234.

FOR FURTHER INFORMATION CONTACT:

By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1115C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7096.

SUPPLEMENTARY INFORMATION: This will be the thirty-first meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the March 1988 meeting of SFIREG.
2. Regional reports.
3. Working Committee reports.

4. Other topics which may arise.

Dated: June 2, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-12962 Filed 6-8-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of 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.: 202-010789-002

Title: Israel Westbound Conference

Parties: Zim Israel Navigation Co., Ltd., Farrell Lines, Inc., Lykes Bros. Steamship Company, Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

Agreement No.: 206-011150-001

Title: Atlantic Westbound Stabilization Agreement

Parties: North Europe-U.S. Atlantic Conference, South Europe/U.S.A. Freight Conference, North Europe-U.S. Gulf Freight Association

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions.

By Order of the Federal Maritime Commission.

Dated: June 6, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-12974 Filed 6-8-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Pandair Freight, Inc.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1514

Name: Pandair Freight, Inc.

Address: 1055 Post Road, Fairfield, CT 06430

Date Revoked: May 6, 1988

Reason: Surrendered license voluntarily

License Number: 2823

Name: Joseph Frank Fraile dba JFF International Forwarding

Address: 2132A E. Dominguez St., Long Beach, CA 90810

Date Revoked: May 17, 1988

Reason: Surrendered license voluntarily
License Number: 2480

Name: Centurion Shipping Co. Ltd.

Address: 1200 Main St., Bridgeport, CT 06601

Date Revoked: May 20, 1988

Reason: Surrendered license voluntarily
Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88-12952 Filed 6-8-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Eastern Iowa Bancshares, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 1, 1988.

A. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eastern Iowa Bancshares, Ltd.*, Cascade, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Onslow Savings Bank, Onslow, Iowa.

2. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Century Bancorp, Inc., Circle Pines, Minnesota, and thereby indirectly acquire

Centennial Bank, Circle Pines, Minnesota.

3. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Peoples Bancshares Corporation, Van Wert, Ohio, and thereby indirectly acquire The Peoples Bank and Trust Company, Van Wert, Ohio.

Board of Governors of the Federal Reserve System, June 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12946 Filed 6-8-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 to (1) supplement current project grants for Sexually Transmitted Diseases (STD) Prevention/Training (P/T) Centers to provide funds for Acquired Immunodeficiency Disease Syndrome (AIDS) professional education training programs and (2) establish one new STD P/T Center under the professional education component of the STD Research, Demonstrations, and Public and Professional Education Grant Program which includes AIDS professional education training.

CDFA Number and Regulation

The Catalog of Federal Domestic Assistance Number is 13.978. Regulations governing Grants for STD Research, Demonstrations, and Public and Professional Education are codified in Part 51b, Subparts A and F of Title 42, Code of Federal Regulations.

Authority

This program is authorized by section 318(b) of the Public Health Service Act [42 U.S.C. 247c(b)], as amended; section 301(a) [42 U.S.C. 241(a)], as amended.

Objective

The objective of these awards is to support professional training programs of STD clinical patient management and AIDS education within the national network of STD P/T centers. This will be accomplished primarily by training

health care professionals (both public and private sector), physicians-in-training, key program staff of AIDS Prevention Programs, and selected others in concepts and procedures related to the prevention of AIDS and in the diagnosis, management, prevention, patient counseling, standards of care, and program development related to STD control.

Eligible Applicants

Eligible applicants for the supplemental funds are the STD P/T centers (Baltimore, Birmingham, Chicago, Cincinnati, Dallas, Denver, Long Beach, Newark, San Juan, and Seattle) presently receiving grant funds.

Eligible applicants to establish a new training center are official public health agencies of State and local governments, in the *Northeastern/New England Area* (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) or the *Western Area* (Arizona, California, Utah, Hawaii, Nevada, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, and the Republic of Palau).

Applications are being limited to the official State and local health agencies because of the emphasis on public health management, clinical training in full-time STD clinics, and STD disease intervention and control.

Priority consideration will be given to funding one new STD P/T center in either of the above areas where the site of the facility is: (1) In a high incidence area of reported AIDS and STD cases relative to all other States and major cities in the nation or is close enough to one or more high incidence areas that prospective trainees from such areas are unlikely to view either the distance or the transportation options as barriers to the training provided; and (2) located beyond 150 miles of an existing STD P/T center to avoid the competition for trainees that is likely to occur within such a shared catchment area.

Availability of Funds

Approximately \$800,000 is available for Fiscal Year 1988 under this announcement. Funding estimates outlined may vary and are subject to change.

Supplemental Applications—

Approximately \$500,000 to \$600,000 will be available in Fiscal Year 1988 to fund up to ten supplements to existing STD P/T centers with an average award of \$50,000 to \$60,000. Funding is expected to be awarded on or about September 1, 1988.

Competing Applications—

Approximately \$200,000 to \$300,000 is expected to be awarded to fund one new STD P/T center and funding is expected to be awarded on or about September 1, 1988. It is expected that the grant will be for a 12-month budget period, in a 1-5 year project period.

Review and Evaluation Criteria

Competing Supplemental applications from current STD P/T centers for funds to provide AIDS-related training will be reviewed and evaluated based on the following:

1. The extent to which AIDS-related training are proposed and where they are not proposed, the reasoning behind the decision to demur;

2. The extent to which AIDS-related training proposed is developed with consideration given to the Curriculum Guidelines or includes acceptable reasoning for any departures from the Guidelines;

3. The extent to which AIDS-related training proposed appears to meet documented needs and to be instructionally sound;

4. Evidence suggesting that any AIDS-related training proposed has been coordinated with local/regional recipients of HRSA AIDS ETCs and that disruptive conflict or competition for a limited number of trainees will be avoided;

5. The extent to which the P/T center can assure that it will be able to acquire the additional training facilities needed to provide the AIDS-related training proposed without disrupting or curtailing the current schedule or required compliment of STD clinical training or STD intervention outreach training, where that instruction is also now provided.

6. The extent to which the applicant is willing to arrange for the instructors selected to teach any AIDS-related courses to meet with the project officer and CDC staff to discuss the instructional offerings planned before curricula are finalized.

Competing applications for a new STD P/T center will be reviewed and evaluated based on the following:

1. The ability to meet the objectives of the program;

2. Evidence that the P/T center will be located in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients;

b. Serves an average of at least 300 patients per 40 weekly service hours;

c. Serves patients of sufficient demographic variety and morbidity; and

d. Is accessible to trainees and patients;

3. Evidence of a satisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation.

4. Evidence that the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; and that the P/T center activities will be effectively coordinated with both the basic control components of the local STD program and CDC to assure a quality national model;

5. The extent to which long- and short-term objectives address the applicant's expected role in meeting the STD 1990 Objectives for the Nation;

6. The extent to which methods will be evaluated for effectiveness and the long- and short-term objectives will be tracked to measure achievement;

7. Evidence of the capability of complying with the CDC documents entitled "Quality Assurance Guidelines for STD Clinics, 1986" (QAG) and revised STD guidelines published in CDC's *Morbidity and Mortality Weekly Report (MMWR)*.

8. Evidence of the capability of complying with the "Sexually Transmitted Disease Prevention/ Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training".

9. Evidence of a commitment from a local university medical school to participate with the applicant in the establishment of a P/T center.

10. Duties and qualifications of individuals performing activities for the training centers and organizational relationship of proposed centers to existing program structure;

11. An itemized budget with accompanying justification, which is clearly and thoroughly explained, reasonable, and consistent with the intended use of grant funds.

Grantee Financial Participation

There are no grantee cost participation requirements for this program.

Application Submission and Deadline

The original and two unbound copies of the application (PHS 5161-1, revised 3/86) must be submitted to Nancy C. Bridger, 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. Supplemental and competing

grant applications are due on or before July 1, 1988.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address 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.)

Late Applications: Applications which do not meet the criteria addressed in 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 Requirements: Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Recipients must comply with the document titled: Content of Aids-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988) (53 FR 6034, February 29, 1988).

Where To Obtain Additional Information

A full description of the program, including areas of interest, program requirements, criteria for review of applications, application forms (PHS 5161-1), and other materials may be obtained from Marsha Driggins, 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, (404) 842-6575 or FTS 236-6575.

Technical assistance may be obtained from Yvonne Green, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, (E02) Atlanta, GA 30333, (404) 639-2775 or FTS 236-2775.

Dated: June 3, 1988.

Robert L. Foster,

Acting Director, Office of Program Support
Centers for Disease Control.

[FR Doc. 88-12953 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88D-0017]

Conditions Under Which Homeopathic Drugs May Be Marketed; Availability of Compliance Policy Guide**AGENCY:** Food and Drug Administration; MMS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7132.15 entitled "Conditions Under Which Homeopathic Drugs May Be Marketed"—May 31, 1988, that prescribes conditions under which homeopathic drugs may be marketed. FDA developed the compliance policy guide in response to the significant increase in the importation and domestic marketing of homeopathic drug products that are being offered for use (or promoted) significantly beyond recognized or customary practice.

ADDRESS: Written requests for single copies of FDA Compliance Policy Guide 7132.15 may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

(Send two self-addressed adhesive labels to assist the Branch in processing your requests.).

FOR FURTHER INFORMATION CONTACT: Joel Davis, Center for Drug Evaluation and Research (HFD-335), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8104.

SUPPLEMENTARY INFORMATION: Until recently, homeopathic drugs have been marketed on a limited scale by a few manufacturers who have been in business for many years and have predominantly served the needs of a limited number of licensed practitioners. Today, the homeopathic drug market has grown into a multimillion dollar industry in the United States based in part on a significant increase in the importation and domestic marketing of over-the-counter (OTC) homeopathic drug products. FDA has prepared Compliance Policy Guide 7132.15 entitled "Conditions Under Which Homeopathic Drugs May Be Marketed"—May 31, 1988, to provide guidance on the regulation of OTC and prescription homeopathic drugs and to delineate conditions under which homeopathic drugs may be marketed.

Compliance Policy Guide 7132.5 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of Compliance Policy

Guide 7132.5 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

This notice is issued under 21 CFR 10.85.

Dated: May 31, 1988.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12949 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0176]

AKZO Chemie America; Filing of Food Additive Petition**AGENCY:** Food and Drug Administration.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that AKZO Chemie America has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethyl(2-ethylhexyl) hydrogenated tallow ammonium chloride as a decolorizing agent in the clarification of refinery sugar liquors.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A3992) has been filed on behalf of AKZO Chemie America, McCook, IL 60525, proposing that Part 172 (21 CFR Part 172) be amended to provide for the safe use of a dimethyl(2-ethylhexyl) hydrogenated tallow ammonium chloride as a decolorizing agent in the clarification of refinery sugar liquors.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 27, 1988.

Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12938 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0139]

Ciba-Geigy Corp.; Filing of Food Additive Petition**AGENCY:** Food and Drug Administration.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and thermal stabilizer in poly-1-butene resins and butene/ethylene copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4077) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and thermal stabilizer in poly-1-butene resins and butene/ethylene copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 27, 1988.

Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12939 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0175]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition**AGENCY:** Food and Drug Administration.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries,

Ltd., has filed a petition proposing that the food additive regulations be amended to provide for an increase in the weight-percent of butene-1 in propylene/butene-1 copolymers for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4081) has been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2-5 Kasumigaseki 3-Chome, Chiyoda-KU, Tokyo 100, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for an increase in the weight-percent of butene-1 in propylene/butene-1 copolymers for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12940 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0389]

**Pfizer Central Research, Pfizer, Inc.;
Filing of Food Additive Petition;
Correction**

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced that Pfizer Central Research, Pfizer, Inc., had filed a food additive petition proposing that the food additive regulations be amended to provide for the use of polydextrose in peanut butter spread (53 FR 2093; January 26, 1988). The food product to which polydextrose would be added was inadvertently described as peanut butter spread, rather than peanut spread, in accordance with 21 CFR 102.23. This notice removes the word "butter" from the last line under the

heading "SUMMARY" and the last line of the first paragraph under the heading "SUPPLEMENTARY INFORMATION" of the January 26, 1988, notice.

DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT:

John W. Gordon, 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 FR Doc. 88-1457, appearing on page 2093, third column, in the issue of Tuesday, January 26, 1988, under the heading "SUMMARY" in the last line, and under the heading "SUPPLEMENTARY INFORMATION" in the last line of the first paragraph, the word "butter" is removed to make it clear that the proposed use of polydextrose is in peanut spread in accordance with 21 CFR 102.23.

Dated: May 27, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-12937 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0187]

**Cook Pacemaker Corp.; Premarket
Approval of Sensor® Model Kelvin®
500 Pulse Generator, Model K Unipolar
Temperature Sensing Lead, Model
5000 Transceiver, and Model 50 Lead
Tester**

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cook Pacemaker Corp., Leechburg, PA, for premarket approval, under the Medical Device Amendments of 1976, of the Sensor® Model Kelvin® 500 Unipolar Cardiac Pulse Generator, Model K Unipolar Temperature Sensing Lead, Model 5000 Transceiver, and Model 50 Lead Tester. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of April 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by July 11, 1988.

ADDRESS: Written request for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-3171.

SUPPLEMENTARY INFORMATION: On December 18, 1987, Cook Pacemaker Corp., Leechburg, PA 15656, submitted to FDA an application for premarket approval of Sensor® Model Kelvin® 500 Unipolar Pulse Generator, Model K Unipolar Temperature Sensing Lead, Model 5000 Transceiver, and Model 50 Lead Tester. The device is indicated for use as a cardiac pacing system. FDA filed the application on December 28, 1987.

On March 11, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, DCRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at DCRH—Contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of DCRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will

publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 11, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the hearing of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21) U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 1, 1988.

John C. Willforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-2942 Filed 6-8-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OIS-001-N]

Quarterly Listing of Program Issuances

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

ACTION: General Notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, and statements of policy that were published beginning December 21, 1987 (the date OBRA was enacted) through March 1988 that relate to the Medicare program. Section 4035(c) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) requires that we publish such a list of issuances in the **Federal Register** every three months. The notice contains sufficient information to determine the subject matter of publications. It also tells where individuals and organizations may review the documents in their entirety and how subscriptions can be obtained.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin (For Issuance Information Only) (301) 966-5265.
Matt Plonski (For Regulation Information Only) (301) 966-4662.

Paul Kosco (For Informational Letters Only) (202) 245-0197.

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 33 million Medicare beneficiaries. Administration of the program involves effective communications with regional offices, state governments, various providers of health care and fiscal intermediaries and carriers who process claims and pay bills and others. To effectively communicate interpretations of the various statutes on which the program is based, we issue regulations under authority granted the Secretary under section 1871 of the Social Security Act (the Act) and also issue various manuals, memoranda and statements necessary to efficiently administer the program.

Section 4035(c) of OBRA '87 added a new section 1871(c)(1) of the Act to require that we publish in the **Federal Register** no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability. The requirement applies to items issued beginning December 21, 1987. Section 4035(c)(1)(B) clarifies that regulations published in accordance with section 1871(a) of the Act under which the Secretary prescribes regulations necessary to carry out the administration of the Medicare program are not subject to this publication requirement. Nonetheless, since the intent of section 4035 is to provide operational and policy statements to the general public and organizations, and some of our regulations may also contain such statements, for the sake of completeness of the listing we are including regulations (proposed and final) published.

This initial publication lists the manual instructions and program memoranda and regulations published beginning December 21, 1987 through March 1988. In this listing of recently published items we do not specifically identify interpretative and substantive rules. It is our policy that all substantive rules are included in regulations.

A. How To Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, or regulations to determine whether any are of particular interest. We have divided this listing into four tables.

Table I gives a brief description of each of the various manuals and memoranda that HCFA maintains. Our

manuals and memoranda are organized according to the user of the materials, e.g. hospital manual, skilled nursing facility manual, intermediary manual. The summaries in Table I allow the reader to determine whether routine issuances are of interest. As discussed below, it is possible for members of the public or organizations to subscribe to our manuals and routinely receive all issuances. Table I includes the HCFA publication number, e.g., Rural Health Clinic Manual (HCFA-Pub. 27), necessary to enter a subscription.

Table II lists, for each of the appropriate manuals, a transmittal number unique to that instruction and a brief statement of the subject matter included. The subject matter in a transmittal may consist of a single instruction or many. Holders of HCFA manuals substitute or add pages accompanied by the transmittal to existing manuals to bring other materials already in the manual up to date. While Table II lists the subject matter of the transmittal, often it is necessary to use information in a transmittal in conjunction with information currently in the manuals. Therefore, subjects listed in Table II may not be dealt with exhaustively. This table also includes program memoranda, program information letters, and technical information letters. These memoranda and letters are not available in the subscription series.

Table III lists all Medicare regulations published in the **Federal Register** during this period. For each item we list the date published, the title of the regulation, and the parts of the Code of Federal Regulations (CFR) which have changes.

Table IV gives the location and telephone number for each of the 50 regional depository libraries. The role of the libraries is discussed in section C, How to Review Listed Material.

B. How To Obtain Listed Material

• Manuals

An individual or organization interested in routinely receiving any listed manual and revisions to it may purchase a subscription to that manual. Subscribers should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA, 22161. Telephone (703) 487-4630.

At this time, selective manuals and transmittals cannot be purchased. An individual or organization can only subscribe to the whole manual (e.g. HCFA-Pub. 13-3) not just selective transmittals. Interested parties should identify the manual(s) they want to subscribe to and contact either GPO or NTIS by letter or telephone. GPO or NTIS will give complete details on how to obtain a subscription.

• Regulations

Regulations are published in the daily **Federal Register**. Interested individuals may purchase individual copies or may subscribe to the **Federal Register** by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202)783-3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. How To Review Listed Material

Individuals or organizations that do not wish to purchase subscriptions may review identified items at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the Federal Depository Libraries. Some may have arrangements to transfer material to local libraries not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, regional depository libraries, listed in Table IV, receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may contact the closest regional depository library for assistance in reviewing material.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. We are providing an information contact person to answer general questions concerning items included in issuances or regulations. Individuals are expected to procure copies of material either locally or through a subscription service. We are exploring the possibility of making selective issuances available for sale.

Questions concerning items in Tables I or II, may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207; Telephone (301) 966-5265. Please do not use this contact to request copies of the listed items.

Questions concerning the regulations in Table III may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966-4662.

Questions concerning the informational letters may be addressed to Paul Kosco, Policy Planning Liaison Staff, Office of Prepaid Health Care, Room 423H Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington DC 20210, Telephone (202) 245-0197.

Table I—Description of Manuals and Memoranda

Part A Intermediary Manual (HCFA-Pub. 13)

The Part A Intermediary Manual is designed for Medicare intermediaries which process claims from providers of services (e.g., hospitals, skilled nursing facilities, home health agencies) under the Medicare program. The manual encompasses the policies and procedures which govern the intermediaries' administrative and financial responsibilities for claims review, bill payment, applying utilization safeguards, and other responsibilities assigned to them. This manual consists of four parts.

- Part 1—Administration (HCFA-Pub. 13-1)
- Part 2—Audits-Reimbursement-Program Administration (HCFA-Pub. 13-2)
- Part 3—Claims Processing (HCFA-Pub. 13-3)
- Part 4—Audits (HCFA-Pub. 13-4)

Medicare Carriers Manual (HCFA-Pub. 14)

The Medicare Carriers Manual is designed for use by Medicare carriers which process claims under the supplementary medical insurance part of Medicare (i.e., the part which helps pay for doctors' services, outpatient care, physical therapy, home health care, and other health services and supplies covered by this part of the program). It encompasses the policies and procedures which govern their administrative and financial responsibilities for claims review, bill payment, applying utilization safeguards and other responsibilities assigned to

them. This manual consists of three parts.

- Part 1—Administration (HCFA-Pub. 14-1)
- Part 2—Program Administration (HCFA-Pub. 14-2)
- Part 3—Claims Processing (HCFA-Pub. 14-3)

Program Memoranda (Non-Manual Issuances)

These transmittals are used to communicate information or requests for action of a one-time only, non-recurring nature. They are issued to:

- Intermediaries (HCFA-Pub. 60A)
- Carriers (HCFA-Pub. 60B)
- Intermediaries/Carriers (HCFA-Pub. 60A/B)
- Regional Offices General (HCFA-Pub. 51)
- Medicare (HCFA-Pub. 52)
- Program Integrity (HCFA-Pub. 53)
- Standards and Certification (HCFA-Pub. 54)
- Professional Review Organizations (HCFA-Pub. 55)
- Medicaid (HCFA-Pub. 56)

State Operations Manual (HCFA-Pub. 7)

This manual contains instructional materials governing State agency responsibilities for making initial and subsequent health and safety certifications as to whether providers of health care services are in compliance with the conditions for participation in the Medicare program.

Regional Office Manual (HCFA-Pub. 23)

The Health Care Financing Administration Regional Office Manual contains administrative and procedural instructions to HCFA Regional Offices. This manual consists of six parts.

- General (HCFA-Pub. 23-1)
- Medicare (HCFA-Pub. 23-2)
- Operational Reviews (HCFA-Pub. 23-3)
- Standards and Certification (HCFA-Pub. 23-4)
- For Future Use (HCFA-Pub. 23-5)
- Medicaid (HCFA-Pub. 23-6)

Peer Review Organization Manual (HCFA-Pub. 19)

This manual is issued to Peer Review Organizations (PROs). It encompasses the policies and procedures which govern the PRO's responsibilities for determining whether medical services provided (or proposed to be provided) are reasonable and necessary for the diagnosis and treatment if the services could effectively be furnished on an outpatient basis. The PROs also review whether the quality of services provided

meets professionally recognized standards of health care.

Hospital Manual (HCFA-Pub. 10)

This manual is issued to hospitals participating in the Medicare program. It contains the policies and procedures applicable to the delivery of hospital services to Medicare beneficiaries, billing procedures, coverage requirements, and related matters governing hospital performance under the Medicare program. This manual also includes a Christian Science Supplement (HCFA-Pub. 32).

Home Health Agency Manual (HCFA-Pub. 11)

This manual is issued to home health agencies participating in the Medicare program. It contains the policies and procedures applicable to the delivery of home health services to Medicare beneficiaries, billing procedures, coverage requirements, and related matters governing their performance under the program.

Skilled Nursing Facility Manual (HCFA-Pub. 12)

This manual is issued to skilled nursing facilities participating in the Medicare program. It contains the policies and procedures applicable to their delivery of skilled nursing facility services to Medicare beneficiaries, billing procedures, coverage requirements, and related matters governing their performance under the program.

Rural Health Clinic Manual (HCFA-Pub. 27)

This manual is intended for use by independent rural health clinics participating in the Medicare program. The manual contains a consolidation of instructions necessary for properly submitting their bills for services to Medicare patients.

Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29)

This manual is intended for use by non-hospital operated renal dialysis facilities participating in the Medicare program. It contains all instructions necessary for the facility to properly submit renal dialysis bills for services to Medicare patients.

Hospice Manual (HCFA-Pub. 21)

This manual is intended for use by independent or provider-based hospices. It contains coverage information and all instructions necessary for hospices to

properly submit bills for services to Medicare patients.

Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9)

This manual is issued to both outpatient physical therapy providers and comprehensive outpatient rehabilitation facilities participating in the Medicare program. The manual contains the policies and procedures applicable to the delivery of physical therapy and rehabilitative services to Medicare beneficiaries, claims processing instructions, billing procedures, coverage requirements and related matters governing providers' performance under the Medicare program.

Coverage Issues Manual (HCFA-Pub. 6)

This manual contains national coverage decisions and sets forth whether specific medical items, services, treatment procedures or technologies can be paid for under the Medicare program.

Provider Reimbursement Manual (HCFA-Pub. 15)

The Provider Reimbursement Manual provides instructions for determining the amount of reimbursement for providers of services participating in the Medicare program. It describes the methods of calculating payments for inpatient hospital and skilled nursing facility (SNF) services under the prospective payment system (PPS), as well as the methods of computing reasonable costs for provider services, including hospital and SNF services not reimbursed under PPS. The Provider Reimbursement Manual consists of two parts.

Part I of the manual describes the reimbursement methods and how various provider expenditures are treated under Medicare reimbursement. Part II contains instructions for completing the cost reporting forms which must be filed annually by providers.

Part I—Provider Reimbursement Manual (HCFA-Pub. 15-1)

- Reimbursement for ESRD and Transplant Services (HCFA-Pub. 15-27)

Part II—Provider Reimbursement Manual

- Cost Reporting—General (HCFA-Pub. 15-II-A)
- Hospital, Skilled Nursing Facility and Health Care Complex Cost Report (HCFA-Pub. 15-II-C)

- Instructions for the Home Health Agency Cost Report (HCFA-Pub. 15-II-D)

- Outpatient Physical Therapy and Outpatient Speech Pathology Provider Cost Report (HCFA-Pub. 15-II-F)

- Cost Reporting for Providers with All-Inclusive Rates or No-Charge Structures (HCFA-Pub. 15-II-G)

- Instructions for Independent Renal Dialysis Facility Cost Report (HCFA-Pub. 15-II-I)

- Home Office Cost Statement (HCFA-Pub. 15-II-J)

- Provider Cost Report Reimbursement Questionnaire (HCFA-Pub. 15-II-K)

- Hospital and Hospital Health Care Complex Cost Report (HCFA 2552-83) (HCFA-Pub. 15-II-L)

- Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report (HCFA-Pub. 15-II-M)

- Hospice Cost Report (HCFA-Pub. 15-II-N)

- Hospital and Hospital Health Care Complex Cost Report (HCFA 2552-84) (HCFA-Pub. 15-II-O)

- Instructions for Home Health Agency Cost Report (HCFA-Pub. 15-II-Q)

- Hospital and Hospital Health Care Complex Cost Report (HCFA 2552-84) (HCFA-Pub. 15-II-S)

- Organ Procurement Agency and Tissue Typing Laboratory Cost Report (HCFA-Pub. 15-II-U)

- Skilled Nursing Facility Prospective Payment Cost Report (HCFA-Pub. 15-II-AD)

Health Maintenance Organizations/Competitive Medical Plans Manual (HCFA-Pub. 75)

The HMO/CMP Manual is for the use of Health Maintenance Organizations and Competitive Medical Plans contracting with Medicare. The Manual includes instructions concerning how to apply for a contract, administer the contract once it is received (including enrollment, services, appeals), and obtain payment from Medicare for enrollees' health services.

Informational Letters

The Health Maintenance Organization/Competitive Medical Plans (HMO/CMP) information letters are addressed to contracting HMOs/CMPs. These letters provide guidelines that are of general applicability to HMOs/CMPs and cover both general and technical information.

Table II—Medicare Manual Instructions

December 21, 1987–March 1988

Trans No.	Manual/Subject/Publication Number
<i>Intermediary Manual</i>	
<i>Part 1—Fiscal Administration (HCFA-Pub. 13-1)</i>	
116	• Coordination of Medicare with the Federal Grants-In-Aid Program (Medicaid)
<i>Intermediary Manual</i>	
<i>Part 2—Audits, Reimbursement</i>	
<i>Program Administration (HCFA-Pub. 13-2)</i>	
356	• Contractor Performance Evaluation Program—FY 88
<i>Intermediary Manual</i>	
<i>Part 3—Claims Process (HCFA-Pub. 13-3)</i>	
1365	• Skilled Nursing Facility Level of Care
1366	• Custodial Care
1367	• Adjustment Bills
1368	• Medical Review of Comprehensive Outpatient Rehabilitation Facility (CORF) Claims
1369	• Update Information to be Included by All Contractors
1370	• Description of MSP Data Exchange Tape Format
1371	• External Tape Label
1372	• Magnetic Tapes
1373	• MSP Data Exchange Tape Record Layout
1374	• Fee Schedules
1375	• Coordination Between Intermediaries and Carriers
1376	• Definitions
1377	• Contested Workers' Compensation Claims
1378	• Lump-Sum Payment which Represents Commutation of Future Benefits
1379	• Private Right of Action
1380	• Authorities of Agreeing to Compromise or Waive Medicare Claim
1381	• Data Exchange from Workers' Compensation Agencies
1382	• Action by Intermediary Where Facts Indicate Medical Benefits May Be Payable by DOL Under Federal Black Lung Program
1383	• Medicare Made Party to Workers' Compensation Hearing
1384	• Conditional Workers' Compensation Claims
1385	• Effect of Lump-Sum Compromise Settlement Apportionment of a Lump-Sum Compromise Settlement of a Contested Workers' Compensation Claim
1386	• Medicare Paid for Services Which Should Have Been Paid for by Workers' Compensation

Trans No.	Manual/Subject/Publication Number
1370	• Services of Interns and Residents
1371	• Review of Form HCFA-1450 for Inpatient and/or Outpatient Billing
1372	• PRO Reporting on Medical Review
1373	• Edits for PRO Report on Medical Review
1374	• Definition of Emergency Inpatient and Outpatient Services
1375	• Definition of an Emergency Service Hospital
1376	• Benefit Period (Spell-of-Illness)
1377	• Services Not Provided Within the United States
1378	• Claims for Payment for Emergency Hospital Services and Services Outside the United States
1379	• Intermediary Preparation of the Medicare Benefit Notice
1380	• Completion of Form HCFA-1533, Medicare Benefit Notice
1381	• Medical Services Furnished to ESRD Beneficiaries by Source
1382	• Outside ECHP Prepaid Health Plan
1383	• Special Rules for Services Furnished by Source, Outside ECHP Prepaid Health Plan
1384	• Claims Processing timeliness
1385	• Establishing Pacemaker Registry Records—Pacemaker Related ICD-9-CM Procedure Codes
1386	• HCFA Common Procedure Coding System (HCPCS)
1387	• Claims Processing Timeliness
1388	• Prepayment Medical Review (MR)
1389	• Claims Processing Timeliness
1390	• Medical Review of Home Health Services
1391	• Home Health Certification and Plan of Treatment
1392	• Data Elements
1393	• Medical Update and Patient Information
1394	• Treatment Codes for Home Health Services
1395	• Addendum to the Plan of Treatment/Medical Update
1396	• Intermediary Medical Information Request
1397	• Medical Review of Home Health Services
1398	• Postpayment Audit
1399	• Definitions
1400	• Services Reimbursable Under Liability Insurance
1401	• General Effect of Liability Insurance on Medicare Payments
1402	• Effect of Payment by Liability Insurer on Deductible and Utilization

Trans No.	Manual/Subject/Publication Number
IM-88-1	• Provider Billing Rights and Responsibilities
IM-88-2	• Provider Actions
IM-88-3	• Identification of Liability Situations
IM-88-4	• Development to Ascertain if Liability Claim Has Been or Will Be Filed
IM-88-5	• Action by Intermediary Where a Liability Claim is Filed
IM-88-6	• Determining the Amount of Indemnification
<i>Carriers Manual</i>	
<i>Part 1—Fiscal Administration (HCFA-Pub. 14-1)</i>	
110	• Coordination of Medicare with the Federal Grants-In-Aid Program (Medicaid)
<i>Carriers Manual</i>	
<i>Part 2—Program Administration (HCFA-Pub. 14-2)</i>	
99	• Other Considerations
100	• Contractor Performance Evaluation Program—FY 88
101	• Medical Review Functional Criterion
<i>Carriers Manual</i>	
<i>Part 3—Claims Process (HCFA-Pub. 14-3)</i>	
1225	• Additional Benefits Payable Because Prior Determination Revised
1226	• Area Carrier-Suppliers Services
1227	• Prepayment Controls
1228	• Development of Prepayment Screens
1229	• Prohibition Against Billing for Unassigned Services Which Are Determined to be Medically Unnecessary
1230	• Update Information to be Included by ALL Contractors
1231	• Description of MSP Data Exchange Tape Format
1232	• External Tape Label
1233	• Magnetic Tapes
1234	• MSP Data Exchange Tape Record Layout
1235	• Criteria for MSP Issues
1236	• Definitions
1237	• Effect of Payments Under Workers' Compensation Plan
1238	• Lump-Sum Payment Which Represents Commutation of Future Benefits
1239	• Private Right of Action
1240	• Authorities for Agreeing to Compromise or Waive Medicare's Claim
1241	• Limitation in Workers' Compensation Law on Period of Time During Which Medical Benefits Are Provided or Total Amount That Can Be Paid for Medical Care
1242	• Data Exchange from Workers' Compensation Agencies

Trans No.	Manual/Subject/Publication Number	Trans No.	Manual/Subject/Publication Number	Trans No.	Manual/Subject/Publication Number
	Action by Carrier Where Facts Indicate Medical Benefits May Be Payable by DOL Under Federal Black Lung Program	IM-88-1	• Determining the Amount of Indemnification <i>Program Memorandum Intermediaries (HCFA-Pub. 60A)</i>	205	Occupational Therapy Services Provided by OTIPs • Emphasis, Components and Applicability
	Conditional Workers' Compensation Claims	A-87-17	• Instructions For Implementing the Balanced Budget and Emergency Deficit Reduction Act of 1987		Team Composition
	Effect of Lump-Sum Compromise Settlement	A-87-18	• Installing the Medicare Code Editor (MCE) and Outpatient Code Editor (OCE) Online	206	Type of Facility—Application of SNF or ICF Regulations
	Medicare Made Party to Workers' Compensation Hearing	A-87-19	• Special Denial and Limitation of Liability Activity Report		Use of Part A or Part B of the Survey Report
	Apportionment of a Lump-Sum Compromise Settlement of a Contested Workers' Compensation Claim	A-87-20	• Effect of Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 on Recent Medicare Program Rules	299	• Utilization Review <i>Regional Office Manual (Medicare) (HCFA-Pub. 23-2)</i>
1230	Duplicate Payment Received by Physician/Supplier	A-88-1	• Clarification of SNF Level of Care		• Retention of Documentation
	• Interns and Residents	A-88-2	• Status of Distribution of Home Health Forms, Training Material and Scheduling of Training		Target Dates
	Determining the Monthly Capitation Payment for a Physician's Services to Maintenance Dialysis Patients	A-88-3	• Changes to the Advance Copy of the New ICD-9-CM Codes		Control of ACERS
1231	• Payment for Physician's Service Furnished to Dialysis Inpatients	A-88-4	• Payment for Organ Procurement Services <i>Program Memorandum Intermediaries (HCFA-Pub. 60B)</i>		ACERS FOR Multi-Regional Contractors
1232	• Medical Services Furnished to ESRD Beneficiaries by Source Outside ECHP Prepaid Health Plan	B-87-16	• Participating Physician and Supplier Enrollment Process		Evaluation of Contractors Under Experimental Contracts
	Special Rules for Services Furnished by Source Outside ECHP Prepaid Health Plan	B-87-17	• Use of Correct Charge Data in Updating Reasonable Charges For Colonoscopy/Sigmoidoscopy HCPCS Codes for Fee Screen Year 1988		Rating the Performance Criteria
1233	• Separate Line Items	B-88-1	• Provisions of Budget Reconciliation Legislation	300	Correction Action
	Explanatory and Denial Message	B-88-2	• Notice of New Interest Rate Applicable on Clean Claims		ACER Format
	Overflow of Information	B-88-3	• FY 88 Reasonable Charge Update and Participation Program—Physicians	31	Contractor Profile
1234	• Transferring Request for Medicare Payment	B-88-4	• Participating Physician and Supplier Program		Executive Summary
1235	• Determining Reasonable Charges for Physicians' Services Furnished in Outpatient Settings	B-88-5	• Guidelines for Pricing Certain HCPCS Code Revisions <i>Program Memorandum Intermediaries/Carriers (HCFA-Pub. 60A/B)</i>	32	Performance Criteria
	Changes to the Advance Copy of the New ICD-9-CM Codes	AB-88-1	• Report of Physicians/Practitioners, Providers, and/or Other Health Care Suppliers Sanctioned/Reinstated		Special Reviews
1236	• Instructions for Implementing the Balanced Budget and Emergency Deficit Reduction Act of 1987	AB-88-2	• Statutory Bases for Denials for the Purposes of Sections 1879 and 1842(l) Determinations		• Uniform Contractor Evaluation Program (UNICEP) <i>Regional Office Manual (Standards and Certification) (HCFA-Pub. 23-4)</i>
1237	• Bill Review of Home Dialysis Supplies	AB-88-3	• Report of Physicians/Practitioners, Providers, and/or Other Health Care Suppliers Sanctioned/Reinstated	31	• Processing Initial Applications for Licenses/Exemptions
	Payment for Home Dialysis Supplies and Equipment	AB-88-4	• HMO Directory <i>State Operations Manual Provider Certification (HCFA-Pub. 7)</i>		Processing Renewal Applications for Licenses
1238	• Medicare Participating Physicians/Supplier Directory (MEDPAR)	204	• Outpatient Occupational Therapy (OOT) and Occupational Therapists in Independent Practice (OTIP)—Citations	32	Options for Operating Under a Correction or Reduction Plan—ICFs/MR Only
1239	• Limits on Charges of Nonparticipating Physicians		Providers of Outpatient Occupational Therapy		Application of Section 1919
	Limits on Actual and Prevailing Charges for Overpriced Procedures				State Elects Plan of Correction Option
	Limits on Charges for Anesthesia Associated with Cataract and Iridectomy Surgery				State Elects Reduction Plan Option
	Limits on Payments and Charges for Other Services and Items			IM-87-1	• Organ Procurement Organizations (OPOs)—Citations
1240	• Prepayment Controls General				Application Process
					Designation Procedures <i>Regional Office Manual (Peer Review Organization Manual) (HCFA-Pub. 19)</i>
				19	• Description of PHDDS
					Creation of PHDDS Tape Files
					Submission of PHDDS Tapes of HCFA
					<i>Hospital Manual (HCFA-Pub. 10)</i>
				526	• Bill Preparation Where Medical Benefits Are Secondary to Group Health Plans for Employed Beneficiaries/Spouses and the Disabled
				527	• Fee Schedules
					Coordination Between Intermediaries and You
				528	• Completion of Form HCFA-1450 for Inpatient and/or Outpatient Billing

Trans No.	Manual/Subject/Publication Number	Trans No.	Manual/Subject/Publication Number	Trans No.	Manual/Subject/Publication Number
529	• Claims Processing Timeliness		Treatment Codes for Home Health Services		<i>Rural Health Clinic Manual (HCFA-Pub. 27)</i>
530	• HCFA Common Procedure Coding System (HCPCS)		Addendum to the Plan of Treatment/Medical Update	23	• Claims Processing Timeliness
531	• Claims Processing Timeliness		Intermediary Medical Information Request	24	• Claims Processing Timeliness
532	• Definitions		Postpayment Audits		<i>Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29)</i>
	Possible Coverage Also Under Auto Medical or No Fault Insurance or Employer Group Health Plan	205	• Definitions	31	• Claims Process Timeliness
	Contested Workers' Compensation Claims		Possible Coverage Also Under Auto Medical or No Fault Insurance or Employer Group Health Plan		<i>Hospice Manual (HCFA-Pub. 21)</i>
	Lump-Sum Commutation of Future Benefits		Lump-Sum Compromise Settlement	17	• Claims Processing Timeliness
	Private Right of Action		Lump-Sum Commutation of Future Benefits	IM-88-1	• Determining the Amount of Indemnification
	Handling of Cases Involving Work-Related Conditions		Private Right of Action		<i>Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9)</i>
533	• Retention of Health Insurance Records		Handling of Cases Involving Work-Related Conditions	68	• Completion of Form-1450 For Billing CORF, Outpatient Physical Therapy, Occupational Therapy or Speech Pathology Services
534	• Submitting Inpatient Bills in No-Payment Situations	206	• Data Elements Needed to Render Home Health Coverage Determination		Medical Review of Comprehensive Outpatient Rehabilitation Facility (CORF) Claims
IM-88-1	• Determining the Amount of Indemnification		Home Health Certification and Plan of Treatment	69	• Claims Processing Timeliness
	<i>Christian Science Sanatorium Hospital Manual Supplement (HCFA-Pub. 32)</i>		Medical Update and Patient Information	70	• Request for Payment
17	• Bill Preparation For Cost Reimbursement Hospitals Where Medicare Benefits Are Secondary to Group Health Plans For Employed Beneficiaries and Spouses		Treatment Codes for Home Health Services		<i>Coverage Issues Manual (HCFA-Pub. 6)</i>
18	• Claims Processing Timeliness		Addendum to the Plan of Treatment/Medical Update	21	• Streptokinase Infusion
	<i>Home Health Agency Manual (HCFA-Pub. 11)</i>		Intermediary Medical Information Request	22	• Treatment of Kidney Stones
203	• Data Elements Needed to Render Home Health Coverage Determination		Postpayment Audits	23	• Power-Operated Vehicles That May Be Used as Wheelchairs
	Home Health Certification and Plan of Treatment	IM-88-1	• Determining the Amount of Indemnification		• Index
	Medical Update and Patient Information		<i>Skilled Nursing Facility Manual (HCFA-Pub. 12)</i>		<i>Provider Reimbursement Manual (HCFA-Pub. 15-1)</i>
	Treatment Codes For Home Health Services	262	• Covered Level of Care		Part I
	Addendum to the Plan of Treatment/Medical Update	263	• Claim Processing Timeliness	342	• Ambulatory Surgical Procedures Performed on an Outpatient Basis by Hospitals
	Intermediary Medical Information Request	264	• Definitions		Application of the ASC Payment Method to All-Inclusive Rate Hospital
	Postpayment Audits		Possible Coverage Also Under Auto Medical or No Fault Insurance or Employer Group Health Plan	343	• Adjustment of the Outpatient Interim Rate to Recognize the Change in Payment for Ambulatory Surgical Center Procedures
204	• Claims Processing Timeliness		Lump-Sum Compromise Settlement		<i>Provider Reimbursement Manual Part II (Skilled Nursing Facility Prospective Payment Cost Report) (HCFA-Pub. 15-II-AD)</i>
	Home Health Certification and Plan of Treatment		Lump-Sum Commutation of Future Benefits		1
	Medical Update and Patient Information		Private Right of Action		• Cost Reporting Periods Beginning On or After October 1, 1986
		IM-88-1	• Determining the Amount of Indemnification		

Publication date	File number	Subject
HMO/CMP Program Information Letters:		
02/29/88	OPHC/PPL 88-01	Insolvency Protection for HMO/CMP Members.
02/04/88	OFM 88-02	Implementation of the Gramm-Rudman-Hollings Legislation and the OBRA '87—Information.
02/26/88	OFM 88-03	Revised Demographic Reports for the Period April 1985 through September 1985—Information.
02/29/88	OFM 88-04	Impact of OBRA-87, Section 4012, Upon Your Organization—Information.
03/14/88	OFM 88-05	Changing Treasury Financial Communications System (TFCS) Bank Information for HMOs/CMPs, and HCPPs.
03/14/88	OFM 88-06	Status of Implementation of OBRA-87, Section 4012—Information.
03/25/88	OFM 88-07	Schedule of 1988 Risk Contract Briefings—Information.

Publication date	File number	Subject
HMO/CMP Technical Information Letter: 01/29/88	Bulletin OFM 88-01	Impact of OBRA-87, Section 4012, Upon Your Organization— Information.

Table III—Regulations Published December 21, 1987–March 1988

Publication date/cite	CFR part	Regulation title
Final Rules:		
01/21/88 (53 FR 1617).....	405.....	Medicare Program; End Stage Renal Disease Program; Responsibilities of Network Organizations.
03/01/88 (53 FR 6526).....	405, 413, 441, 482, 485, 498.....	Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols.
03/02/88 (53 FR 6629).....	405, 406, 409, 410, 413, 416, 421, 424, 489, 498.....	Medicare Program; Conditions for Medicare Payment (Correction Notice issued 03/21/88) (53 FR 9174).
03/29/88 (53 FR 10077).....	413.....	Medicare Program; Changes to the Lesser of Costs or Charges Provisions.
Proposed Rules:		
01/19/88 (53 FR 1363).....	419.....	Medicare Program; Medicare Coverage of Immunosuppressive Drugs.
02/19/88 (53 FR 5008).....	405, 406, 407.....	Medicare Program; Hospital Insurance Entitlement and Supplementary Medical Insurance Enrollment and Entitlement.
03/02/88 (53 FR 6672).....	413.....	Medicare Program; Program for Kidneys Sent to Foreign Countries or Transplanted in Non-Medicare Beneficiaries.
03/16/88 (53 FR 8654).....	405, 431, 433, 434, 456, 462, 466, 473, 476, 489.....	Medicare and Medicaid Programs; Changes to Peer Review Organizations Regulations.
03/22/88 (53 FR 9337).....	405, 412, 413, 489.....	Medicare Program; Miscellaneous Changes Affecting Payment for Inpatient Hospital Services.
03/31/88 (53 FR 10404).....	74, 405.....	Medicare, Medicaid and Clinical Laboratories Improvement Act (CLIA) Patient Confidentiality Rules.
Notices:		
01/27/88 (53 FR 2291).....		Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers; Correction Notice.
02/12/88 (53 FR 4158).....		Medicare Program; Supplementary Medical Insurance Premiums.
03/11/88 (53 FR 7976).....		Medicare Program; Peer Review Organization Contracts; Solicitation of Statement of Interest From In-State Organizations.
03/28/88 (53 FR 9988).....		Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting.
03/31/88 (53 FR 10431).....		Termination of Capital Expenditure Review Agreements Under Section 1122 of the Social Security Act.

Table IV—Regional Depository Libraries

Auburn Univ. at Montgomery Library,
Documents Department, Montgomery, AL
36193, (205) 279-9110

University of Alabama Library, Documents
Dept., Box S, (205) 348-6046, University, AL
35486

Dept. of Library Archives and Public Records,
Third Floor—State Cap., Phoenix, AZ
85007, (602) 255-1035

University of Arizona Library, Government
Documents Dept., Tucson, AZ 85721, (602)
626-1871

California State Library, Govt. Publications
Section, P.O. Box 2037, Sacramento, CA
95809, (916) 322-1572

Univ. of Colorado Library, Government Pub.
Division, Boulder, CO 80309, (303) 492-8834

Denver Public Library, Govt. Pub.
Department, 1357 Broadway, Denver, CO
80203, (303) 573-5152

Connecticut State Library, Government
Documents Unit, 231 Capitol Documents
Unit, Hartford, CT 06115, (302) 566-1971

Univ. of Florida Libraries, Library West,
Documents Department, Gainesville, FL
32601, (904) 392-0367

Univ. of Georgia Libraries, Government
Reference Dept. Athens, GA 30602, (404)
542-8949

Univ. of Hawaii Library, Govt. Documents
Collection, 2550 The Mall, Honolulu, HA
96982, (808) 948-8230

Univ. of Idaho Library, Documents Section,
Moscow, ID 83843, (208) 885-6344

Illinois State Library, Information Services
Branch, Centennial Building, Springfield, IL
62756, (217) 712-7597

Indiana State Library, Serials and Documents
Section, 140 North Senate Avenue,
Indianapolis, IN 46204, (317) 232-3678

Univ. of Iowa Libraries, Govt. Publication
Department, Iowa City, IA 52242, (319) 353-
3318

University of Kansas, Doc. Collect, Spencer
Library, Lawrence, KS 66045, (913) 864-4662

Univ. of Kentucky Libraries, Govt. Pub.
Department, Lexington, KY 40506, (606)
257-2639

Louisiana State Univ. Library, BA/Docs.
Dept., Middleton Library, Baton Rouge, LA
70803, (504) 308-2570

Louisiana Technical Univ. Library, Documents
Department, Ruston, LA 71272, (318) 257-
4962

University of Maine, Raymond H. Fogler
Library, Documents Depository, Orono, ME
04469

University of Maryland, McKeldin Library
Doc. Div., College Park, MD 20742, (301)
454-3034

Boston Public Library, Government Docs.
Dept., Boston, MA 02117, (617) 536-5400,
ext. 295

Detroit Public Library, Sociology Department,
5201 Woodward Avenue, Detroit, MI 48202,
(313) 833-1000

Michigan State Univ., P.O. Box 30007, 735 E.
Michigan Avenue, Lansing, MI 48909, (517)
373-0640

University of Minnesota, Govt. Pub. Division,
409 Wilson Library, Minneapolis, MN
55455, (612) 373-7813

Univ. of Mississippi Library, Documents
Department, University, MS 38677, (601)
232-7091 ext. 7

Univ. of Montana, Mansfield Library,
Documents Division, Missoula, MT 59812,
(406) 243-6700

Nebraska Library Comm., Federal Document,
3420 P Street, Lincoln, NE 68508, (402) 471-
2045

University of Nebraska Lincoln, D.L. Love
Memorial Library, Documents Division
LL201N, Lincoln, NE 68508, (402) 472-2562

University of Nevada Library, Govt., Pub.
Department, Reno, NA 89557, (702) 784-
6579

Newark Public Library, Social Services
Division, 5 Washington Street, Newark, NJ
07102, (201) 733-7812

University of New Mexico, Zimmerman,
Library, Government Pub Dept.,
Albuquerque, NM 87131, (505) 277-5441
New Mexico State Library, Reference
Department, P.O. Box 1629, Santa Fe, NM
87503, (505) 827-2033

New York State Library, Empire State Plaza,
Albany, NY 12230, (518) 474-5563

Univ. of North Carolina At Chapel Hill
Library, BA/SS Div. Documents, Chapel
Hill, NC 27514, (919) 933-1151

North Dakota State Univ. Library, Govt.
Documents Department, Fargo, ND 58105
(701) 237-8886, (In cooperation with)

Univ. of North Dakota, Chester Fritz Library,
Documents Department, Grand Forks, ND
58202 (701) 777-1646

State Library of Ohio, Documents
Department, 65 South Front Street,
Columbus, OH 43215, (614) 466-9511

Oklahoma Dept. of Libraries, Government
Documents, 200 NE 18th Street, Columbus
City, OK 73105, (405) 521-2502

Oklahoma State Univ. Library, Documents
Department, Stillwater, OK 74078, (405)
642-6546

Portland State Univ. Library, Documents
Department, P.O. Box 1151, Portland, OR
97207, (503) 229-3673

State Library of Penn., Government Pub.
Section, P.O. Box 1601, Harrisburg, PA
17105, (717) 787-3752

Texas State Library, Public Service
Department, P.O. Box 12927, Austin, TX
78711, (512) 475-6725

Texas Tech Univ. Library, Govt. Documents
Department, Lubbock, TX 79409, (806) 742-
2268

Utah State University, Merrill Library, U.M.C.
30, Logan, UT 84321, (801) 750-2602

University of Virginia, Alderman Library,
Public Doc., Charlottesville, VA 22901, (804)
924-3133

Washington State Library, Documents
Section, Olympia, WA 98504, (206) 753-
1027

West Virginia Univ. Library, Documents
Department, Morgantown, WV 26506, (304)
293-3640

Milwaukee Public Library, 814 West
Wisconsin Avenue, Milwaukee, WI 53233,
(414) 278-3000

State Hist. Library of Wisconsin, Government
Pub. Section, 816 State Street, Madison, WI
53706 (608) 262-4347

Wyoming State Library, Supreme Ct./Lib.
Building, Cheyenne, WY 82002, (307) 777-
7281

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

Dated: May 12, 1988.

William L. Roper,
Administrator, Health Care Financing
Administration.

[FR Doc. 88-12995 Filed 6-8-88; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-020-08-4333-10; GP8-145]

Burns District Advisory Council Tour

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice: Burns District Advisory
Council Tour.

SUMMARY: Notice is hereby given in
accordance with section 309 of the
Federal Land Policy and Management
Act of 1976, that a field tour involving
the Burns District Advisory Council will
be held on Thursday, July 7, 1988,
through Friday, July 8, 1988.

The agenda for the tour will include
the Steens Mountain area on Thursday,
July 7th, to discuss the following
programs: Recreation, wilderness, and
tenure and livestock grazing. The tour
will move to the Trout Creek Mountains
area on July 8th to discuss long-term
management plans for livestock grazing
and interrelationships with wilderness,
wildlife, riparian and land tenure
adjustment programs.

DATES: The tour will be held from 9:00
a.m. (Pacific Standard Time) on
Thursday, July 7, 1988 until 6:00 p.m. on
Friday, July 8, 1988.

FOR FURTHER INFORMATION CONTACT:
Joshua L. Warburton, District Manager,
Bureau of Land Management, Burns
District Office, HC 74-12533, Hwy 20
West, Hines, Oregon, 97738. Phone
(503)-573-5241.

SUPPLEMENTARY INFORMATION: The tour
is open to the general public. However,
interested persons will need to furnish
their own transportation, meals and
lodging. The tour will leave the Burns
District Office at 9:00 a.m. (Pacific
Standard Time) on July 7th and return at
approximately 6:00 p.m. on July 8th.
Advisory Council Members will lodge at
Fields, Oregon, on the night of July 7th.
Individuals wishing to participate on the
tour should contact the Burns District
Office at the above address.

Dated: June 2, 1988.

Donald R. Cain,
Associate District Manager.

[FR Doc. 88-12998 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-3-M

[OR-050-4410-10:GP8-150]

Oregon; Prineville District Advisory Council Meeting/Tour

June 1, 1988.

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice is hereby given that a
meeting of the Prineville District
Advisory Council will be held on June
30, 1988. The meeting will be in the form
of a field tour and will begin at 8:00 AM
at the Bureau of Land Management
Office located at 185 East Fourth Street,
Prineville, OR 97754. The purpose of the
tour will be to view the riparian
demonstration areas on Camp Creek
and Bear Creek and discuss riparian
management opportunities in the
Prineville District.

The tour is open to the public,
however, transportation will not be
provided. Anyone wishing to
accompany the tour is requested to
contact the District Manager at the
above address prior to June 24, 1988.

Dated: June 1, 1988.

James L. Hancock,
District Manager, Prineville District Office.
[FR Doc. 88-12999 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-3-M

[NV-943-08-5420-10-ZFKB; N-48550]

Proposed Issuance of Disclaimer of Interest; Nevada

June 1, 1988.

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: A portion of the mineral
interest in the lands described below
was inadvertently and erroneously
conveyed to the United States in an
exchange consummated in 1968. The
United States proposes to disclaim and
release that mineral interest to the
exchange proponent.

DATES: Protest or Comment Date:
Comments and protests should be sent
to the Nevada State Director, BLM, 850
Harvard Way, P.O. Box 12000, Reno,
Nevada 89520, prior to September 12,
1988.

Effective Date: Disclaimer of any
mineral interest of the United States
shall issue on September 12, 1988.

FOR FURTHER INFORMATION CONTACT:
Mary Clark, BLM Nevada State Office,
702-784-5413.

SUPPLEMENTARY INFORMATION: The
United States of America, pursuant to
the provisions of section 315 of the
Federal Land Policy and Management
Act of 1976 (43 U.S.C. 1745), does hereby
give notice of its intention to disclaim
and release any mineral interest in the
following described land:

Mount Diablo Meridian, Nevada
T. 30 N., R. 53 E.,

Sec. 5, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 9, SE $\frac{1}{4}$ NW $\frac{1}{4}$;

T. 31 N., R. 53 E.,

Sec. 31, lot 4.

The described lands aggregate 694.93 acres in Elko County.

After review of the official records, exchange file, and conveyance documents, it is the position of the Bureau of Land Management that a portion of the mineral interest in the lands mentioned above is found to have been inadvertently and erroneously conveyed to the United States.

Any person wishing to submit a protest or comments on the above disclaimer should do so in writing before the expiration of 90 days from the date of publication of this notice. If no protests are received, the disclaimer will be effective on the date shown above.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-12981 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-HC-M

[AK-040-08-4213-21; AA-64718]

Realty Action; FLPMA Lease Proposal Near Old FAA Farewell Landing Field, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Notice is hereby given that pursuant to Section 302 of The Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1732), Barry Scott Mileur of Palmer, Alaska, has submitted a lease proposal to resolve his occupancy trespass of public land located approximately ten miles west southwest of the old FAA Farewell Landing Field and approximately 55 miles southeast of McGrath, Alaska, on the left or western bank of the Windy/Middle Fork of the Kuskokwim River, north of the Trimokish Hills within the following general legal description:

Seward Meridian, Alaska

T. 28 N., R. 27 W., (unsurveyed),

Sec. 26, NW $\frac{1}{4}$ SW $\frac{1}{4}$ those portions with improvements;

Sec. 27, NE $\frac{1}{4}$ SE $\frac{1}{4}$ those portions with improvements.

Containing approximately 2.0 acres.

The above lands would be offered noncompetitively to the prospective lessee under a 3-year renewable lease at no less than fair market rental. The proposed lease would authorize existing improvements used as a base camp for the lessee's trapping operations. Only

applications by the above prospective lessee, who built the improvements, and who has the appropriate licenses from the State of Alaska, will be accepted.

The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease in accordance with 43 CFR 2920.6. The general terms and conditions for leases are found in 43 CFR 2920.7.

DATE: For a period up to and including July 22, 1988, interested parties may submit comments.

ADDRESS: Comments must be submitted to the Anchorage District Manager, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn (907) 267-1214.

Laun Buoy,

Acting District Manager.

[FR Doc. 88-12993 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-JA-M

[ID-040-07-4212-11; I-25474]

Realty Action; Classification for Recreation and Public Purpose Lease; Custer County, ID, Correction

AGENCY: Bureau of Land Management, Interior.

REALTY ACTION: Classification for Recreation and Public Purpose Lease of Public land in Custer County, Idaho; Correction.

SUMMARY: Correction of Notice of Realty Action published in Vol. 53 No. 97.

Thursday, May 19, 1988, page 17982.

The notice is corrected deleting the published legal description and replacing it with the following correct legal description:

T. 11 N., R. 18 E. B.M.,

Section 27: NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$.

Dated: June 3, 1988.

Jerry W. Goodman,

District Manager.

[FR Doc. 88-13000 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-GG-M

Realty Action: Exchange of Public Lands, Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: N-47854; Exchange of public mineral interests in Washoe County, Nevada.

SUMMARY: The proposed action is the exchange of mineral estates between the United States and White Pine Lumber

Company. The surface estate of these lands was traded in 1975. The following described public mineral estate has been examined and through the development of land use planning decisions based on public input, resources considerations, regulations and Bureau policies, it has been determined that the proposed exchange is consistent with section 206 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976.

Mount Diablo Meridian, Nevada (Public Mineral Estate)

	Acres
Township 41 North, Range 18, M.D.M.:	
Section 01: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$	440.29
Section 02: Lots 1, 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$	
Township 41 North, Range 19 East, M.D.M.:	
Section 03: Lots 3, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$	963.97
Section 04: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ (all)	
Township 42 North, Range 18 East, M.D.M.:	
Section 01: SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ W $\frac{1}{4}$	2,430.36
Section 02: Lot 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$	
Section 11: E $\frac{1}{2}$ NE $\frac{1}{4}$	
Section 12: SE $\frac{1}{4}$	
Section 13: Lots 2, 3, 8, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$	
Section 23: E $\frac{1}{2}$ E $\frac{1}{2}$	
Section 24: Lots 4, 5, 6, 7, S $\frac{1}{2}$ NW $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{2}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$	
Section 26: E $\frac{1}{2}$ E $\frac{1}{2}$	
Section 35: E $\frac{1}{2}$ E $\frac{1}{2}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$	
Section 36: Lots 1, 2, 3, 4, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$ W $\frac{1}{2}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$	
Township 42 North, Range 19 East, M.D.M.:	
Section 16: E $\frac{1}{2}$	1,954.97
Section 20: NE $\frac{1}{4}$	
Section 21: N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$	
Section 23: E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$	
Section 26: SE $\frac{1}{4}$ NE $\frac{1}{4}$	
Section 30: Lots 2, 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$	
Section 31: NE $\frac{1}{4}$ NW $\frac{1}{4}$	
Section 34: SW $\frac{1}{4}$ SW $\frac{1}{4}$	
Section 35: WNE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$	
Containing.....	5,789.59

Sam Jaksick, White Pine Lumber Company, P.O. Box 1430, Reno, NV, 89505, seeks to acquire the above described public mineral estate in exchange for the following private mineral estate.

Mt. Diablo Meridian, Nevada; (Private Mineral Estate)

	Acres
Township 40 North, Range 22½ East, M.D.M.: Section 01: Tract 37	62.87
Township 40 North, Range 23 East, M.D.M.: Section 06: Lots 14, 15, SE¼SW¼	120.00
Section 07: SW¼NE¼, NE¼NW¼, W¼SE¼	160.00
Section 09: Tract 51A, W¼NW¼, NW¼SW¼	160.00
Section 16: Tract 51B, 51D, E¼SE¼	160.00
Section 17: SW¼NW¼, NE¼SW¼, S¼SE¼	160.00
Section 18: NE¼NE¼	40.00
Section 20: Tract 53C, lot 3	
Section 21: Tract 53B, 53D, lot 2, E¼NE¼, SW¼NE¼, NE¼SE¼	277.83
Section 27: N¼SW¼	80.00
Section 28: SE¼NE¼, N¼SE¼	120.00
Township 41 North, Range 19 East, M.D.M.: Section 20: E¼W¼	160.00
Township 41 North, Range 22 East, M.D.M.: Section 03: S¼SW¼	80.00
Section 04: SW¼NE¼, SE¼NW¼, NW¼SE¼, SE¼SE¼	160.00
Section 06: Lot 2, SW¼NE¼	80.76
Section 10: S¼NE¼, NE¼NW¼	120.00
Section 11: SW¼NW¼, NE¼SE¼, S¼SE¼	160.00
Section 12: S¼SW¼, SW¼SE¼	120.00
Section 13: NE¼, N¼NW¼, N¼SE¼, SE¼SE¼	360.00
Township 41 North, Range 23 East, M.D.M.: Section 03: SW¼NE¼	40.00
Section 07: SE¼NE¼	40.00
Section 08: SW¼NW¼, W¼SW¼	120.00
Section 13: W¼SE¼	80.00
Section 16: S¼SW¼, N¼SE¼, SW¼SE¼	200.00
Section 17: SW¼NE¼, N¼NW¼, SE¼NW¼, N¼SE¼, SE¼SE¼	280.00
Section 18: Lot 4 (SW¼SW¼)	39.65
Section 19: Lot 1 (NW¼NW¼), E¼NW¼, W¼SE¼	199.81
Section 21: NW¼NE¼, E¼W¼	200.00
Section 24: NW¼NE¼, SE¼NW¼, N¼SW¼, SW¼SW¼	200.00
Section 26: NE¼NE¼, S¼NE¼, S¼NW¼, NW¼SW¼	240.00
Section 27: NE¼SE¼, S¼SE¼	120.00
Section 28: N¼NW¼, SW¼NW¼	120.00
Section 30: W¼E¼	160.00
Section 31: NW¼NE¼, SE¼NE¼, E¼SE¼	160.00

Township 42 North, Range 21

East, M.D.M.: Section 35: SW¼NE¼	40.00
Containing	4,920.92

An exchange of the respective surface estates was completed in 1975, with the U.S. and White Pine retaining their respective mineral estates. The exchange will result in the reunification of the surface and mineral estates in High Rock Canyon and 49 Mountain. The exchange would greatly enhance the present and future uses of the adjacent land and the respective surface estates. The exchange would allow the respective mineral estates to be managed compatibly with the surface estates. In High Rock Canyon, the minerals would be managed by BLM in accordance with the Cowhead-Massacre Management Framework Plan (MFP), an Area of Critical Environmental Concern Management Plan, and public land laws. On 49 Mountain, White Pine Lumber Company would be able to manage their private lands, surface and mineral estate, in accordance with their own best management practices.

The proposed exchange will benefit the public and allow improved management of public lands. The public interest will be well served by making this exchange. The value of the mineral estates is approximately equal. Exchange of the subject lands is consistent with planning system decisions in the Cowhead-Massacre MFP.

Publication of this notice in the Federal Register shall segregate the subject public mineral estate from all other forms of appropriation under the mining laws for a period of two years. The exchange is expected to be completed before the end of that period.

Detailed information concerning the proposed exchange, including the environmental analyses, mineral report and land report are available for review at the Surprise Resource Area Office, 602 Cressler Street, Cedarville, CA 96104, and Susanville District Office, 705 Hall Street, Susanville, CA 96130.

DATE: On July 25, 1988, interested parties may submit comments to the District Manager, Susanville.

ADDRESS: Comments should be sent to: District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Comments will be evaluated by the Nevada State Director of the Bureau of Land Management, 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 for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Pete Humm, Susanville District Office, at (916) 257-5381, or Joe McFarlan, Surprise Resource Area Office, at (916) 279-6101.

Date: May 20, 1988.

C. Rex Cleary,
Susanville District Manager.

[FR Doc. 88-12936 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

May 17, 1988.

The plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., May 17, 1988.

The plat representing the depend resurvey of portions of the First Standard Parallel North (south boundary), west boundary, and subdivisional lines and C.E. Number 176, and the survey of the subdivision of sections 30 and 31, T. 5 N., R. 98 W., Sixth Principal Meridian, Colorado, Group No. 820, was accepted May 9, 1988.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,
Chief, Cadastral Surveyor for Colorado.
[FR Doc. 88-12983 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-08-4220-11; NM NM 011409; NM NM 020780]

Proposed Continuation of Withdrawals; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Air Force proposes that the 26,559.23-acre mineral withdrawals for Kirtland Air Force Base (formerly Sandia Base), continue for an additional 25 years. The land would remain closed to location and entry under the mining laws and to

leasing under the mineral leasing laws. The surface estate is acquired and not subject to the public land laws.

DATE: Comments should be received by September 7, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Houglund, BLM, New Mexico State Office, 505-988-6554.

The Department of the Air Force, proposes that the existing land withdrawals made by Public Land Order Nos. 1257 and 1428 be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

- T. 9 N., R. 3 E.,
 Sec. 1, lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 3, lots 3, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 12;
 Sec. 13, N $\frac{1}{2}$ N $\frac{1}{2}$;
 T. 10 N., R. 3 E.,
 Sec. 34, SW $\frac{1}{4}$;
 Sec. 35, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 T. 9 N., R. 4 E.,
 Sec. 1, lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 2, lots 2, 3, 4, 5, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 3, lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 4, lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 5, lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 6, lots 1, 2, 3, 4, 5, 6, 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 7, lots 1, 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 8 to 13, inclusive;
 Sec. 14, lots 1, 2, 3, 4, 5, N $\frac{1}{2}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, part of survey 1023, Tr. A-E;
 Secs. 15 to 17, inclusive;
 Sec. 18, lots 1, 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 19, lots 1, 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Secs. 20 to 22, inclusive;
 Sec. 23, lots 1, 2, 3, 4, 5, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$, S $\frac{1}{2}$, part of survey 1023, Tr. A-E;
 Secs. 24 to 29, inclusive;
 Sec. 30, lots 1, 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 31, lots 1, 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 32;
 Sec. 33, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Secs. 34 to 36, inclusive;
 T. 10 N., R. 4 E.,
 Sec. 29, S $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 30, lots 3, 4, S $\frac{1}{2}$ of lot 2, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 31, lots 1, 2, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 32, all except 3.67 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, comprising water reservoir of the City of Albuquerque.

The areas described aggregate approximately 26,559.23 acres in Bernalillo County.

The purpose of the withdrawals are to protect the lands for the Air Force mission needs in research, testing and development activities. The research projects conducted at Kirtland Air Force Base are essential to our national defense and national interests. The

withdrawals segregate the lands from location and entry under the mining laws and from leasing under the mineral laws. The lands are not subject to operation of the general land laws because the surface estate has been acquired by the United States. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing a potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Larry L. Woodard,
 State Director.

Dated: May 25, 1988.

[FR Doc. 88-12935 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-FB-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31262]

International Paper Co.; Exemption

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, retroactively exempts from prior approval under 49 U.S.C. 11343, *et seq.* the control by International Paper Company of two Class III railroads, the Longview, Portland and Northern Railway Company and the Mississippi Export Railroad Company, subject to standard labor protective conditions.

DATES: This decision is effective on June 12, 1988. Petitions to reopen must be filed by June 29, 1988.

ADDRESSES: Send petitions referring to Finance Docket No. 31262 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Edward D. Greenberg, 1054 31st Street, NW., Suite 200, Washington, DC 20007-4492.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: June 1, 1988.

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

Noreta R. McGee,
 Secretary.

[FR Doc. 88-12950 Filed 6-8-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Action To Enjoin Discharge of Water Pollutants; City of Eunice

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. City of Eunice*, Civil Action No. , was lodged with the United States District Court for the Western District of Louisiana on May 22, 1988. The consent decree establishes a compliance schedule for the Louisiana wastewater treatment plant owned and operated by the City of Eunice to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the City's National Pollutant Discharge Elimination System Permit and the applicable regulations relating to the discharge of pollutants. The consent decree also requires payment of a civil penalty of \$20,000 in three installments, to be completed by July 1, 1989. The consent decree calls for the City to achieve compliance by October 1, 1989.

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. *City of Eunice*, D.J. Ref. No. 90-5-1-1-2943.

The consent decree may be examined at the office of the United States Attorney, Western District of Louisiana, 3B 12 Federal Bldg., Shreveport, La. 71101; at the Region VI office of the Environmental Protection Agency, First Interstate Bank Tower at Fountain Place, 1445 Ross Ave., Dallas, Tx. 75202, and 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 \$1.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13003 Filed 6-8-88; 8:45 am]

BILLING CODE 4401-01-M

Lodging of Settlement Agreement Pursuant to Clean Air Act; Washington Department of Transportation

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 19, 1988 a proposed settlement agreement in *United States v. State of Washington Department of Transportation*, Civil Action C-87-63T, was lodged with the United States District Court for the Western District of Washington. The complaint filed by the United States alleged violations of the Clean Air Act, and the asbestos NESHAP by defendant during defendant's removal of a steam pipe from the Puyallup River Bridge in Tacoma, Washington. The settlement agreement requires defendant to pay a civil penalty of \$17,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement agreement. 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. State of Washington Department of Transportation*, D.J. Ref. No. 90-5-2-1-880. The proposed settlement agreement may be examined at the Office of the United States Attorney, 3600 Seafirst 5th Avenue, Seattle, Washington 98104 and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the settlement agreement may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517,

Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13004 Filed 6-8-88; 8:45 am]

BILLING CODE 4401-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Ambler Warehousing Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 26, 1988 a proposed Consent Decree in *United States v. Ambler Warehousing Corp. et al.* was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed consent decree concerns violations by the defendants of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos. The proposed decree imposes a civil penalty of seventeen thousand (\$17,000) dollars and requires that all defendants comply with the asbestos NESHAP in the future and that subsequent asbestos related activity be conducted only by properly trained contractors.

The Department of Justice will receive for a period of thirty (30) days from the date of 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 v. Ambler Warehousing Corp., et al.*, D.J. Ref. 90-5-2-1-1098.

The proposed consent decree may be examined at the Office of the United States Attorney, 601 Market Street, Philadelphia, Pennsylvania 19107, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Rm. 1515, 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.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13001 Filed 6-8-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree Pursuant to the Clean Air Act; Avco Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 19, 1988, a proposed consent decree in *United States and the Metropolitan Government of Nashville and Davidson County v. Avco Corporation*, civil action no. 3-87-0631, was lodged with the United States District Court for the Middle District of Tennessee. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Air Act against the defendant for continuing violations of applicable portions of the federally-approved and enforceable Nashville-Davidson County State Implementation Plan ("SIP").

Pursuant to the partial consent decree, Avco is required to equip two (2) spray paint booths with a VOC control system by June 30, 1988; to use exclusively complying coatings at thirteen (13) spray paint booths on and after June 30, 1988; and to pay a civil penalty of \$266,667.20 to the United States and \$66,666.80 to Metro within sixty (60) days of entry of the partial consent decree. The partial consent decree also imposes stipulated penalties upon Avco for failure to meet the timetable established for compliance. Along with entry of the partial consent decree, the parties will enter a stipulation dismissing certain of Avco's counterclaims against the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial 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 and the Metropolitan Government of Nashville and Davidson County v. Avco Corporation*, D.J. Ref. 90-5-2-1-1109.

The proposed partial consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, Room 879, 801 Broadway, Nashville, Tennessee 37203, or the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30364. Copies of the partial consent

decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed partial 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 at a cost of \$.10 per page or \$1.80.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13002 Filed 6-8-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984, Industry-University Center for Glass Research

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"), Industry-University Center for Glass Research at the New York State College of Ceramics, Alfred University, Alfred, New York ("the Center") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 16, 1988, disclosing changes in the Center's membership. 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. Specifically, the Center advised that Aluminum Company of America and M&T Chemicals, Inc. have become members of the Center.

No other changes have been made in either the membership or planned activity of the Center.

On August 11, 1986, the Center filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the *Federal Register* pursuant to Section 6(b) of the Act on September 10, 1986, 51 FR 32262. On February 24, 1987, the Center filed an additional written notification. The Department published notice in the *Federal Register* in response to the additional notification on March 19, 1987 (52 FR 8661).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-13005 Filed 6-8-88; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise sections 2, 3 and 4 of the Appendix A Technical Specifications to be consistent with a replacement upgrade of the San Onofre Nuclear Generating Station, Unit 1 Nuclear Instrumentation System (NIS). The modification would consist of a complete replacement of the NIS detectors, cabling, and signal processing equipment. Certain existing output devices and cable routing would be retained. The licensee stated that the proposed revisions to the technical specifications would assure appropriate limiting conditions for operation and surveillance requirements for the upgraded NIS. The safety analyses of transients and accidents are reviewed in the application. Because the new NIS detectors are not symmetrical with respect to the reactor, a revised dropped control rod analysis is presented which is the analysis most affected by the upgraded nuclear instrumentation system.

The Need for the Proposed Action

The proposed amendment is required to permit the licensee to replace the Nuclear Instrumentation System.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with

the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for hearing in connection with this action was published in the *Federal Register* on May 18, 1988 (53 FR 17809). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 15, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 3rd day of June, 1988.

For the Nuclear Regulatory Commission.
Charles M. Trammell,
*Senior Project Manager, Project Directorate
 V, Division of Reactor Projects—III, IV, V and
 Special Projects, Office of Nuclear Reactor
 Regulation.*

[FR Doc. 88-12966 Filed 6-8-88; 8:45 am]
 BILLING CODE 7590-01-M

[Docket No. 50-397]

**Washington Public Power Supply
 System; Environmental Assessment
 and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21 issued to Washington Nuclear Project No. 2 (WNP-2), located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise License Condition 2.c(16), Attachment 2, Item 3(b) to read "The licensee shall implement (installation or upgrade) requirements of R.G.1.97, Rev. 2 for flux monitoring prior to startup following the fourth refueling outage." The license currently requires this implementation following the third outage. The licensee has installed flux monitoring instrumentation. However, the installation is not yet environmentally qualified according to Regulatory Guide 1.97.

The proposed action is in accordance with the licensee's application for amendment dated December 23, 1987, as supplemented by letter dated January 15, 1988.

The Need for the Proposed Action

The proposed change to the Technical Specification will make it possible to continue operation of the facility while efforts continue to meet the requirements of R.G.1.97.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Operating License. The proposed revision will allow the facility to operate even through the flux monitoring installation does not yet meet the environmental qualification requirements of R.G.1.97. The revisions have been found to be acceptable because this is a relatively new system and no licensee is meeting the qualification requirements applicable at WNP-2. Furthermore, the licensee has

demonstrated a good faith effort toward achieving compliance with the license condition. The proposed changes do not increase the probability of consequences of an accident because there is existing qualified instrumentation to provide operators with sufficient data to assess reactor conditions (e.g., control rod position monitors, and reactor vessel level and pressure monitors) in the unlikely event of an accident condition prior to implementation. No changes are proposed in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed amendment to the license involves qualification of monitoring instrumentation located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* April 5, 1988 (53 FR 11154). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there is no significant environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. Denial of the request would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2, dated December, 1981.

Agencies and Person Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 23, 1987 and supplement dated January 15, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 31st day of May, 1988.

For the Nuclear Regulatory Commission.
George W. Knighton,
*Director, Project Directorate V, Division of
 Reactor Projects—III, IV, and V and Special
 Projects, Office of Nuclear Reactor
 Regulation.*

[FR Doc. 88-12967 Filed 6-8-88; 8:45 am]
 BILLING CODE 7590-01-M

[Docket No. 50-029]

**Yankee Atomic Electric Co. and
 Yankee Nuclear Power Station;
 Issuance of Environmental
 Assessment and Finding of No
 Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station (YNPS) located in Rowe Township, Massachusetts.

Identification of Proposed Action

The amendment would consist of a change to the operating license authorizing an extension to the expiration date for YNPS from November 4, 1997 to July 9, 2000, a period of two years and eight months.

The proposed amendment to the license is responsive to the licensee's application dated September 15, 1987 and as supplemented on December 2, 1987. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility

Operating License No. DPR-3, Yankee Atomic Electric Company, Yankee Nuclear Power Station, Docket No. 50-029," dated June 2, 1988.

Summary of Environmental Assessment

The NRC staff reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for YNPS. The evaluation was based on the licensee's September 15, 1987 and December 2, 1987 submittals, the plant Final Safety Analysis Report and plant Technical Specifications.

Radiological Impacts

Although the population in the vicinity of YNPS has increased slightly, it is likely to remain stable for the period of the extension; thus, the site requirements of 10 CFR Part 100 are now and would still be met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances. The net annualized environmental impacts attributable to the uranium fuel cycle, which form the basis for Table S3 of 10 CFR Part 51, remain essentially unchanged from those previously considered. The environmental impacts attributable to transportation of fuel and waste to and from the plant, with respect to normal conditions of transport and possible accidents in transport would be minimal. In addition, the proposed additional period of reactor operation would not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with the NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. Technical Specifications are in place to ensure continued compliance with these requirements during any additional period of operation.

Non-Radiological Impacts

The NRC review identified no anticipated additional degradation of the habitat surrounding the plant with regard to indigenous plant and animal species for the additional period of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection from non-radiological effluent discharges for the period of the license extension. The staff also performed an assessment of impact on historic properties in accordance with revisions

to 36 CFR Part 800 (Historic Preservation Act) effective October 1, 1986. No significant impact on any historic properties was identified with the license extension.

The staff also verified the licensee's cost/benefit analysis provided in the September 15, 1987 submittal and discussions with respect to commitment of resources and alternatives and found them to be valid.

Finding of No Significant Impact

The staff has reviewed the proposed change to the expiration date of the YNPS Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the *Federal Register* on October 21, 1987 (52 FR 39311). No request for hearing or petition to leave to intervene was filed following this notice.

For further details with respect to this action see the application for amendment dated September 15, 1987 and as supplemented on December 2, 1987 and the Environmental Assessment dated June 2, 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC 20555 and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

For the Nuclear Regulatory Commission.

Marton B. Fairtile,
Project Manager, Project Directorate I-3,
Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 2nd day of June 1988.

[FR Doc. 88-12968 Filed 6-8-88; 8:45am]

BILLING CODE 7590-01-M

Commonwealth Edison Co., Zion Generating Station, Units 1 and 2; Order Imposing Civil Monetary Penalty

[Docket Nos. 50-295 and 50-304 Licenses No. DPR-39 and DPR-48 EA 87-211]

I

Commonwealth Edison Company (licensee) is the holder of Operating Licenses No. DPR-39 and DPR-48 (licenses) issued by the Nuclear Regulatory Commission (NRC/Commission) on April 6 and November 4, 1973. The licenses authorize the licensee to operate Zion Generating Station in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on September 21 through October 26, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated January 4, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated February 3, 1988. In its response, the licensee admits certain violations, disagreed that its pressure isolation valve testing program was inadequate, denied that Violation B occurred as stated in the Notice, took partial exception to Violation C, and requested mitigation of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix of this Order, that the violations occurred as stated and that the penalty proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Regional Administrator, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137; and to the NRC Resident Inspector at Zion.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission,
James M. Taylor,
Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland this 26th day of May 1988.

Appendix—Evaluation and Conclusion

In a letter dated February 3, 1988, the licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties (Notice) dated January 4, 1988. In its response the licensee (1) admitted to two of the four violations documented in the Notice, (2) denied that Violation B had occurred, (3) admitted to Violation C in part, subject to qualifications, (4) asserted that it had

aggressively pursued correction of pressure isolation valve testing deficiencies, and (5) requested mitigation of the civil penalty based on its prompt corrective actions, its prior performance indicating responsiveness for regulatory concerns, and its denial that one of the violations had occurred. Provided below are (1) a restatement of contested Violation B, a summary of the licensee's response to Violation B, and the NRC's evaluation of the contested violation; (2) a restatement of Violation C (which the licensee has admitted in part), a summary of the qualifications associated with licensee's admission of Violation C, and the NRC's evaluation of the licensee's qualifications; (3) the NRC's assessment of the licensee's corrective actions concerning its Pressure Isolation Valve (PIV) testing program; (4) the NRC's evaluation of the licensee's arguments in support of mitigation of the proposed civil penalty; and (5) the NRC's conclusion.

I. Evaluation of Violation B

A. Restatement of Violation B

10 CFR Part 50, Appendix B, Criterion XI, as implemented by Commonwealth Edison Company's Quality Assurance Topical Report, CE-1-A, requires, in part, that a test program be established to assure that all testing required to demonstrate that structures, systems, and components will perform satisfactorily in service is identified and performed in accordance with written test procedures.

Contrary to the above, as of October 26, 1987, the licensee's test program failed to assure that all testing, required to demonstrate that pressure isolation check valves will perform satisfactorily in service, was performed in accordance with written test procedures. The procedure did not provide adequate direction as to when procedures were required to be performed. Specifically, during the refueling outage from March 1987 through August 1987, and after the safety injection which occurred on July 29, 1987, check valve leakage testing was not specified nor done to assure that the LPI/RHR check valves were installed correctly and functioning as pressure isolation barriers prior to plant startup.

B. Summary of Licensee's Response

In its February 3, 1988, response, the licensee contends that procedures in place as of July 29, 1987, provided adequate direction as to when the PIV tests were to be performed. The licensee asserts that testing of the PIV's after the safety injection on July 29, 1987 was not required because: (1) Testing after a

single valve actuation does not measurably decrease the already low level of risk from check valve failures as determined by testing every refueling outage, (2) the NRC has accepted Zion's testing program without requiring a test after each valve actuation, and (3) the testing programs in place at the majority of PWRs do not require testing more frequently than every refueling outage.

C. NRC Evaluation

1. The licensee asserts that testing check valves following valve actuation (such as after the July 29, 1987 safety injection) does not affect check valve failure probability. That assertion is not relevant to this violation. This violation resulted from the licensee's failure to establish an adequate program to assure that testing required to demonstrate that components would perform satisfactorily in service was carried out.

2. The licensee asserts that the NRC has accepted Zion's testing program without requiring a test after each valve actuation. The licensee states that in a January 25, 1980 meeting, the NRC staff described how annual testing of check valves could reduce risk from check valve failures to an acceptable level. The licensee states that, in the formulation of the February 29, 1980 Confirmatory Order, and in Inspection Report Nos. 50-295/80-14 and 50-304/80-14, the NRC established the position that Zion's testing program was acceptable without the requirement to test after every valve actuation. It also cites the NRC endorsement of the Zion Probabilistic Safety Study (ZPSS) and NUREG-1150 results as further indication of NRC acceptance absent commitments to perform testing following each valve actuation.

The NRC's Confirmatory Order issued on February 29, 1980 and the licensee's letters to the NRC dated March 14 and 28, 1980 described criteria for PIV testing. The Order specified the testing to be performed and the letters stated that procedures had been revised incorporating the requirement that these check valves will be tested whenever the primary coolant system pressure is brought to within 100 psig of the system design pressure on the low pressure side of these check valves. After the July 29, 1987 safety injection, check valve testing was not done to assure that the LPI/RHR check valves were installed correctly and functioning as pressure isolation barriers prior to plant startup, even though the primary coolant system pressure was brought to within 100 psig of the system design pressure on the low pressure side of these check valves.

Neither the NRC Confirmatory Order issued February 29, 1980, nor Inspection Report Nos. 50-295/80-14 and 50-304/80-14, nor the NRC endorsement of the ZPSS and NUREG-1150 involved a detailed review of, or acceptance of, the PIV testing program and procedures being implemented by the licensee.

3. The determination of how and when to test PIVs is based on written commitments made by the licensee as well as on Orders and Technical Specifications. The Confirmatory Order of February 29, 1980 which contained specific requirements for testing PIV's was imposed on Zion Station because, unlike the majority of PWRs, Zion is located in a high population density area. Regulatory requirements for each facility are unique and requirements imposed on other licensees are not relevant to this case.

D. NRC Conclusion

The NRC concludes that the PIVs had not been tested at the frequency required by the February 29, 1980 Confirmatory Order nor as described in letters to the NRC. Therefore, the NRC concludes that the violation did occur as stated in the Notice.

II. Discussion of Violation C

A. Restatement of Violation C

10 CFR Part 50, Appendix B, Criterion II, as implemented by Commonwealth Edison Company Quality Assurance Topical Report, CE-1-A, requires, in part, that the licensee comply with NRC Safety Guide 33, dated November 1972. Safety Guide 33 states that the requirements and recommendations in proposed standard ANSI-3.2, "Standard for Administrative Controls for Nuclear Power Plants," dated November 2, 1972 (issued as ANSI N18.7), provide an adequate basis for complying with the quality assurance program requirements of Appendix B to 10 CFR Part 50. ANSI-3.2, Section 5.4, requires that each procedure be reviewed periodically to ensure that the procedures in current use provide the best possible instructions to the operators.

Contrary to the above, periodic reviews of test procedures PT-2P, PT-2M, and PT-2N, RHR Hot Leg and Cold Leg Injection Check Valve Leak Check, were not performed from November 1980 through August 1987 to ensure that the best possible instructions were provided to the operators.

B. Summary of Licensee Response

The licensee admits the violation in part, with the following qualifications: (1) The licensee did perform periodic reviews of the subject procedures, and

(2) the periodic procedure review is outlined in Zion Administrative Procedure ZAP 5-51-3, under which guidelines the periodic procedure reviews were performed. The licensee interpreted the violation to address the adequacy of the periodic review.

C. NRC Evaluation

In August 1979, ZAP 5-51-3, "Periodic Procedure Review," established the licensee's periodic procedure review program. As implemented at Zion, procedures were considered to be reviewed when the procedures were performed and the results were evaluated. However, the NRC concludes this does not constitute a periodic review of the procedure, as required by ANSI-3.2, Section 5.4. In addition, guidance was not provided in the procedures to ensure that, as the procedures were being used, that an evaluation of adequacy of the procedures was conducted. Several procedural deficiencies had not been identified by the licensee's review process.

D. NRC Conclusion

Based on the above, the NRC concludes that the violation did occur as stated in the Notice.

III. Assessment of Corrective Actions for Pressure Isolation Valve Test Program Deficiencies

A. Summary of Licensee's Response

The NRC letter dated January 4, 1988, from A.B. Davis to J.J. O'Connor, transmitting the Notice of Violation and Proposed Imposition of Civil Penalty, stated:

"We are particularly concerned that CECO continued to maintain, until shortly before the October 30, 1987 Enforcement Conference that its PIV testing program was adequate to test the pressure isolation function of the PIV's and that it did meet regulatory requirements."

The licensee response to this issue asserts that once CECO had become aware of specific test procedure deficiencies that had effectively prevented it from satisfying test requirements and commitments, it immediately began an aggressive program of rectifying the deficiencies and retesting the check values.

B. NRC Evaluation

While the NRC agrees that corrective actions began as early as September 24, 1987, execution of these actions was not performed in accordance with the licensee's quality assurance program and required significant NRC

involvement to ensure that PIV testing was performed correctly. The following are examples:

- After the NRC inspectors informed licensee management of specific PIV testing concerns on September 23, 1987, radiographic testing (RT) of some PIVs was conducted on September 24, 1987. However, review of the radiographs was not performed by Quality Control (QC) until October 5, 1987, after NRC inquired about documentation of the RT, review of the results, and acceptance criteria used to evaluate the results. As of March 18, 1988, the licensee had not provided to the NRC the acceptance criteria used for that QC review. The licensee later had these valves leak tested because of ambiguities associated with the use of radiography as a PIV test method.
- On about October 2, 1987, the NRC asked whether calibrated test instrumentation was used for leak testing valves. On October 6, 1987, the inspectors learned that a flowmeter had been used in the past which was not in the licensee calibration program and had not been calibrated following repairs in 1982. This finding resulted in invalidation of all PIV testing performed since 1982, including the retesting of PIVs after September 23, 1987.
- The licensee's response also states that on November 13, 1987, upon submittal of the proposed Technical Specifications (TS) regarding pressure isolation valve testing, the station immediately implemented the proposed TS by issuing a standing order to operating shift personnel. On December 21, 1987, the resident inspector noted that the standing order had not yet been issued. A standing order was subsequently placed in the shift engineers' office on December 21, 1987, as a result of the resident's inquiry.

C. NRC Conclusion

The NRC agrees that by November 24, 1987, the licensee completed all PIV testing on both units using calibrated instrumentation and in accordance with its Quality Assurance program; however, NRC involvement was required to ensure that test procedures were adequate to demonstrate the operability of PIVs and that the Technical Specification requirements were implemented in accordance with the licensee's commitment. The NRC concluded that the licensee's corrective actions did not reflect an aggressive response to identified concerns.

IV. Assessment of Civil Penalty Escalation and Mitigation

A. Summary of Licensee Arguments for Mitigation

The licensee believes that credit should be given for prompt corrective actions in response to the identified concerns, couple with its past performance with regard to responsiveness to regulatory concerns.

The licensee states that implementation of the regulatory improvement program in February 1984 has improved awareness of regulatory requirements, and that the absence of Severity Level III violations since 1983, except for the HVAC issue, which was attributed to original construction, is indicative of improved regulatory performance. The licensee states that Zion Station does not diminish the importance of any Level IV or V violations that were incurred during the past years; however, those violations do not indicate a lack of management initiative or unresponsiveness to regulatory concerns.

B NRC Evaluation

The NRC does not agree that the licensee took an aggressive approach to resolving identified concerns. Although the licensee's responsiveness to identified concerns has been enhanced by its regulatory improvement program, the program was ineffective in this case. A large number of quality program violations associated with PIV testing were identified. Although the licensee's responsiveness has been improving in many areas, in this case the corrective actions were not prompt and were only minimally acceptable.

The licensee's past performance in the area of testing has only been satisfactory (i.e., rated Category 2 in the latest SALP) and there have been several licensee event reports and violations related to testing and control of test equipment. Therefore, mitigation of the proposed civil penalty based on the licensee's past performance in this area is not considered appropriate.

C. NRC Conclusion

Based on the above, the NRC concludes that a sufficient basis has not been provided to mitigate the proposed civil penalty.

V. Conclusion

After careful consideration of the licensee's response, the NRC staff has concluded: (1) That Violations B and C described in the Notice occurred as stated, (2) that the licensee's corrective actions did not reflect an aggressive response to identified concerns, and (3) a sufficient basis was not provided for mitigation of the proposed civil penalty. The NRC staff considers the violations to collectively constitute cause for significant concern and are appropriately classified in the aggregate as a Severity Level III violation. Accordingly, a civil penalty in the

amount of One Hundred Thousand Dollars (\$100,000) should be imposed.

[FR Doc. 88-12969 Filed 6-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 83 and 76 to Facility Operating Licenses Nos. DPR-42 and DPR-60, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota. The amendments are effective as of the date of issuance.

The amendments change the high flux, power range (low setpoint) in Specification 2.3.A.1.b from equal to or less than 25% of rated power to equal to or less than 40% of rated power.

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 amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing in connection with this action was published in the *Federal Register* on March 25, 1988 (53 FR 9832). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the *Federal Register* on May 31, 1988, at FR 9831.

For further details with respect to this action, see (1) the application for amendments dated November 3, 1987, (2) Amendments Nos. 83 and 76 to Licenses Nos. DPR-42 and DPR-60, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. 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—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission,

Dominic C. DiIanni,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-12970 Filed 6-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-14868, License No. 35-18336-01 EA 87-178]

Osage Wireline Service; Order Imposing Civil Monetary Penalties

I

Osage Wireline Service, Cleveland, Oklahoma (the licensee) is the holder of Materials License No. 35-18336-01 issued by the Nuclear Regulatory Commission (the NRC or Commission) on December 14, 1978, and amended in its entirety on June 26, 1985. The license authorizes the licensee to use sealed sources for oil and gas well logging in accordance with the conditions specified therein.

II

A routine inspection of the licensee's activities was conducted on August 17, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 22, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by two letters received by the NRC Region IV office on January 28, 1988.

In its responses, the licensee denied two violations, contended that one violation was "unnecessary" and stated that the civil penalties would be detrimental to its survival. Consequently, by letter dated February 16, 1988, the NRC provided the licensee with the opportunity to submit financial information on its recent profit and loss and its net worth. The licensee subsequently submitted its corporate income tax returns for 1985 and 1986 and financial statements for 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that violation C.3.a should be withdrawn and the civil penalties reduced accordingly, and that violation C.4 should be amended, but that the remaining violations occurred as stated and that the penalties proposed for these violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of One Thousand Four Hundred Fifty Dollars (\$1,450) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in Section II above, as amended by this Order, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 27th day of May 1988.

Appendix—Evaluation and Conclusion

On December 22, 1987, a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) was issued for the violations identified during a routine NRC inspection. Osage Wireline Service responded to the Notice by two letters received in the NRC Region IV office on January 28, 1988, and subsequent statements of the corporate financial status. The licensee denied two violations, stated that one violation was "unnecessary" and requested complete mitigation of the civil penalties. The NRC's evaluation and conclusion regarding the licensee's agreements are as follows:

I. Restatement of Violation A

Section 8.3.2 of the procedures submitted with the license application states that neutron source handling shall be performed using the approved handling tool only.

Contrary to the above, on August 17, 1987, a Licensee's representative stated to the NRC inspector that he routinely handled the neutron source with his hands.

This is a repeat violation.

Summary of Licensee's Response

The licensee denies routinely handling the neutron source, but admits that Section 8.3.2 of the Procedure states that neutron sources shall be handled by approved handling tools only. The licensee claims that this rule does not consider practical application of source maintenance, and that there are times when touching a source is inevitable. The licensee argues that the words, "routinely handle" unfairly invoke thoughts of negligence and complacency, that it has always done the best job to avoid contact or exposure, and that therefore a penalty for this matter is unjust.

NRC Evaluation of Licensee's Response

The licensee denies only that the neutron source was handled with the hands *routinely*. The frequency of such handling is not the only important issue. Also important is that the source was handled with the hands in violation of Section 8.3.2. of procedures. The NRC does not consider it ever necessary to touch a neutron source and maintains that neutron source handling should always be performed using approved

handling tools. Therefore, Violation A occurred as stated.

Restatement of Violation B

Section 8.5.1 of the procedures submitted with the license application states that a radiation survey of the job site will be performed before and after each job.

Contrary to the above, on 13 occasions during the period of December 17, 1986 through August 17, 1987, radiation surveys of job sites were not performed before and after each job.

Summary of Licensee's Response

The licensee admits to not performing job surveys on 13 occasions, despite the requirement of section 8.5.1 of the Procedure Manual that surveys will be performed before and after each job. However, the licensee argues that some situations exist where these surveys are not warranted, in the view of its company representative. It states that "interpretations" differed from regulations, but its representatives were not negligent in overall safety practices of job surveys, and that a penalty for this violation is unjust.

NRC Evaluation of Licensee's Response

The NRC maintains that radiation surveys of job sites should always be performed before and after each job in order to determine that there is no contamination. Moreover, the licensee committed to following its procedures which clearly required that surveys be performed before and after each job. Therefore, violation B remains as stated.

Restatement of Violation C.1

License Condition 16 requires that the licensee conduct a physical inventory every 6 months to account for all sealed sources received and possessed under the license, and maintain records of such inventories for 2 years from the date of each inventory.

Contrary to the above, records of inventories of sealed sources were not maintained from August 1985 until August 1987.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.1 remains as stated.

Restatement of Violation C.2.a

License Condition 17 requires that the Licensee transport licensed material or deliver licensed material to a carrier for transport in accordance with the

provisions of 10 CFR Part 71. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170-189.

49 CFR 172.300(a) requires that each person who offers for transport a package containing hazardous material mark each package in a manner required by Subpart D of Part 172. 49 CFR 172.301(a) requires, in part, that a package having a rated capacity of 110 gallons or less be marked with the proper shipping name and identification number (preceded by "UN" or "NA" as appropriate). 49 CFR 172.310(a) requires, in part, that in addition to any other markings, each package of radioactive material which conforms to the requirements for Type A or Type B packaging be plainly and durably marked with the words "TYPE A" or "TYPE B" as appropriate.

Contrary to the above, as of August 17, 1987, sources T-951 (4.65 curies of americium-beryllium) and CSV-650 (2 curies of cesium) had been transported and the transportation containers, with a rated capacity of less than 110 gallons, used to ship these sources were not marked with the proper shipping name and identification number or with the words "TYPE A" or "TYPE B" as appropriate.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.2.a remains as stated.

Restatement of Violation C.2.b

49 CFR 172.403 requires, in part, that unless excepted from labeling by Sections 173.421 through 173.425, each package of radioactive material be labeled, as appropriate, with a RADIOACTIVE WHITE-I, a RADIOACTIVE YELLOW-II, or a RADIOACTIVE YELLOW-III label.

Contrary to the above, as of August 17, 1987, sources T-951 (4.65 curies of americium-beryllium) and CSV-650 (2 curies of cesium) had been transported and the packages were not labeled as required by 49 CFR 172.403, nor were they excepted from labeling.

This is a repeat violation.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.2.b remains as stated.

Restatement of Violation C.3.a

License Condition 18 requires, in part, that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application dated October 22, 1978 and letter dated January 16, 1985.

Section 2 of the procedures submitted with the license application requires that thermoluminescent dosimeter (TLD) Gamma-Neutron badges be processed on a quarterly basis.

Contrary to the above, as of August 17, 1987, employee badges for the fourth quarter of 1986 were not processed.

Summary of Licensee's Response

The licensee denies that TLD badges were not processed for the fourth quarter of 1986 and offers as evidence two reports from the TLD processor dated April 22 and April 24, 1987.

NRC Evaluation of Licensee's Response

The NRC has determined that the licensee processed TLD badges for the fourth quarter of 1986, and that the violation should be withdrawn. The NRC notes, however, that the badges for the fourth quarter of 1986 were worn through the first quarter of 1987 and therefore were not returned for processing on a quarterly basis, as required.

Restatement of Violation C.3.b

Section 3 of the procedures submitted with the license application requires that all sources of radioactivity be kept locked in the Licensee's Radioactive Material storage unless actually in use.

Contrary to the above, from August 15 until August 17, 1987, a 2 curie cesium-137 source and a 4.65 curie americium-beryllium source were not kept locked in the licensee's Radioactive Material storage but were stored on a truck.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.b remains as stated.

Restatement of Violation C.3.c

Section 8.5.3 of the procedures submitted with the license application states that the results of surveys of the job site will be recorded on the Radiation Survey Data Sheet.

Contrary to the above, no record of the results of surveys of job sites was maintained for the period December 19, 1986 through August 15, 1987.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.c remains as stated.

Restatement of Violation C.3.d

The licensee's letter of January 16, 1985, states that a specified individual had assumed the position of Radiation Safety Officer (RSO).

Contrary to the above, as of August 17, 1987, the specified RSO was no longer employed by the Licensee, and the duties of the RSO had been performed by an unauthorized RSO since about December 17, 1986.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.d remains as stated.

Restatement of Violation C.3.e

Figure #9 submitted with the license application diagrams the required configuration that neutron source holders shall have when being housed in shielded containers.

Contrary to the above, as of August 17, 1987, neutron source holders housed in shielded containers did not have the required configuration.

Summary of Licensee's Response

The licensee admits the violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.3.e remains as stated.

Restatement of Violation C.4

10 CFR 20.201(b) requires that each licensee shall make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in 10 CFR Part 20, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present.

10 CFR 20.105(b)(1) and (2) require that no licensee possess, use, or transfer licensed material in such manner as to create in any unrestricted area radiation levels which, if an individual were continuously present in the area, could result in his receiving a dose in excess

of 2 millirems in any hour or 100 millirems in any 7 consecutive days.

Contrary to the above, from August 17, 1987 until approximately December 17, 1987, surveys had not been made of the unrestricted areas adjacent to the radioactive source storage area.

Summary of Licensee's Response

The licensee admits this violation, but notes that the cited dates of the violation are in error.

NRC Evaluation of Licensee's Response

The NRC has determined that the violation occurred, but agrees with the licensee that the dates as cited were erroneous. The citation is therefore corrected to read as follows:

Contrary to the above, from approximately December 17, 1986 until August 17, 1987, surveys had not been made of the unrestricted areas adjacent to the radioactive source storage area.

Restatement of Violation C.5

10 CFR 20.203(e) requires, in part, that areas in which licensed material in an amount exceeding 10 times the quantity specified in Appendix C of 10 CFR Part 20 are stored or used be conspicuously posted with a sign or signs bearing the words "CAUTION RADIOACTIVE MATERIALS" or "DANGER RADIOACTIVE MATERIALS."

Contrary to the above, as of August 17, 1987, the storage area which contained licensed material in an amount exceeding 10 times the quantity specified in Appendix C of 10 CFR Part 20 was not posted with a sign or signs bearing the words "CAUTION RADIOACTIVE MATERIALS" or "DANGER RADIOACTIVE MATERIALS."

Summary of Licensee's Response

The licensee admits that the storage area was not posted with signs that read "CAUTION RADIOACTIVE MATERIALS" or "DANGER RADIOACTIVE MATERIALS." However, the licensee asserts that the area was posted with a sign which read "Caution, radiation area," and that this sign had been approved by the NRC during a previous inspection in 1983. For this reason, the licensee claims that citation for this violation was "unnecessary."

NRC Evaluation of Licensee's Response

In 10 CFR Part 20 "Caution Radiation Area" and "Caution Radioactive Materials" or "Danger Radioactive Materials" have different and distinct meanings. 10 CFR 20.203(b) requires that a radiation area be posted with the words "Caution Radiation Area" and 10

CFR 20.202(b)(2) defines a radiation area as any area accessible to personnel in which there exists radiation at such levels that a major portion of the body could receive in any one hour a dose in excess of 5 millirems or in any 5 consecutive days a dose in excess of 100 millirems. However, 10 CFR 20.203(e) requires that areas in which licensed materials in an amount exceeding 10 times the quantity specified in Appendix C are stored or used be posted "Caution Radioactive Materials" or "Danger Radioactive Materials." The licensee's storage area should have been posted in accordance with the requirements of 10 CFR 20.203(e). In addition, the NRC has no evidence that this sign had been approved during a previous inspection in 1983. Therefore, violation C.5 remains as stated.

Restatement of Violation C.6

10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. As defined in 10 CFR 20.3(a)(7), an unrestricted area is any area to which access is not controlled by the licensee for purposes of protection of individual's from exposure to radiation and radioactive materials.

Contrary to the above, on August 17, 1987, a cesium-137 source (serial No. CSV-650) was stored in an open transportation container in a truck parked in an open garage, an unrestricted area, and was not secured against unauthorized removal.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.6 remains as stated.

Restatement of Violation C.7

10 CFR 20.401(a) requires that each licensee maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required.

Contrary to the above, as of August 17, 1987, exposure records for the second quarter of 1987 were not maintained for employees for whom such monitoring was required.

Summary of Licensee's Response

The licensee admits this violation.

NRC Evaluation of Licensee's Response

Since the licensee admits the violation, Violation C.7 remains as stated.

II. Summary of Licensee's Request for Mitigation

The licensee argues that the proposed civil penalties are not needed to "improve management control over licensed activities," that the attitude by members of its company is not "complacent" towards compliance with NRC requirements, that, due to economic hardship, the balance of responsibility has been shifted to members of its organization who were not ready for additional loads of work, that due to different interpretation of requirements, sections B, C.1, C.3.b, C.3.d, and C.5 were not clear to its new RSO, that it has spent an additional \$3,500 on a private consultant, and that it has had three management changes and should not be punished for the deeds of previous management. In addition, the licensee argues that civil penalties are reserved for gross negligence including disrespect for authority, and that as it has been receptive and quick to make corrections necessary for full compliance, the civil penalties are excessive and unwarranted. Moreover, the licensee argues that the civil penalties are detrimental to its survival.

NRC Evaluation of the Licensee's Request for Mitigation

It is management's responsibility to ensure that it is actively involved in its licensed program and is aware of NRC regulatory requirements and that NRC regulatory requirements are understood and followed. Confusion on the part of the licensee management is not a basis for mitigation.

As stated in the NRC's Enforcement Policy, civil penalties may be imposed for violations in order to emphasize the need for lasting remedial action and to deter future violations and are not reserved for gross negligence or disrespect for authority. With regard to the licensee's argument that it was quick to make corrections necessary for full compliance, the NRC has determined that the licensee's corrective actions were only such as would be expected, and did not provide a basis for mitigation of the civil penalties. Finally, although the Enforcement Policy states that the economic impact of civil penalties should not be such that it puts the licensee out of business or adversely affects a licensee's ability to safely conduct licensed activities, costs incurred by a licensee in obtaining professional consulting services in order to maintain its licensed activities in compliance with the Commission's regulations are not considered as a

basis for civil penalty mitigation. The NRC has reviewed the licensee's corporate tax returns for 1985 and 1986 and financial statements for 1987. It is the NRC's conclusion that payment of the civil penalties would not create an undue hardship and adversely affect the licensee's ability to safely conduct licensed activities.

III. NRC Conclusion

In consideration of the licensee's responses to the NOV, the NRC staff has withdrawn Violation C.3.a.

Concomitantly, the civil penalty for Violation C, which was \$500, has been reduced to \$450. The licensee has not provided an adequate basis for further mitigation of the civil penalties. The civil penalties for violations A and B, \$500 each, remain unchanged. Consequently, civil penalties in the amount of \$1,450 should be imposed.

[FR Doc. 88-12971 Filed 6-8-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549

Revisions

Form 10-K, File No. 270-48
Form 10-Q, File No. 270-49
Form 8-K, File No. 270-50
Form 20-F, File No. 270-156
Form 12b-25, File No. 270-71

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 12b-25 under the Securities Exchange Act of 1934 and related amendments. The proposed revisions relate to the reporting requirements applicable when an issuer changes its fiscal year end and the quarterly reporting requirements for a first time registrant. With respect to Form 10-K, approximately 9,486 respondents are affected and an estimated 1,701 burden hours are required per person. With respect to Form 10-Q, approximately 9,518 respondents are affected and an estimated 190 burden hours are required per response. With respect to Form 8-K,

approximately 11,850 respondents are affected and an estimated 6 burden hours are required per response. With respect to Form 20-F, approximately 132.75 respondents are affected and an estimated 2,110 burden hours are required per response. With respect to Form 12b-25, approximately 4,266 respondents are affected and an estimated 2.5 burden hours are required per response.

Submit general comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Direct any comments concerning the accuracy of the estimated average burden hours for compliance to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004 and to Robert Neal at the above address.

Jonathan G. Katz,
Secretary.

June 2, 1988.

[FR Doc. 88-12976 Filed 6-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25773; File No. SR-MSRB-88-2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Advertising

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1988, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a 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

(a) The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation of rule G-21 (hereafter referred to as the "proposed rule change") concerning the content of municipal securities advertisements. The proposed rule change states that the use of current yield information in municipal securities advertisements without other yield information would be materially misleading under rule G-

21. Thus, dealers may not show only current yield in municipal securities advertisements. However, a municipal securities advertisement may include current yield if, at a minimum, the advertisement also includes the lowest of yield to call or yield to maturity and the type size of the current yield is no larger than other yield information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Board received an inquiry whether including current yield information in municipal securities advertisements, alone or with other yield information would be materially misleading. The Board also was asked if a dealer may advertise current yield if other information is included but is in smaller print.

The Board frequently has stated that the yield to call or yield to maturity is the most important factor in determining the fairness and reasonableness of the price of any given transaction in municipal securities. Such yields typically are used as a basis for dealers and customers to evaluate an investment in municipal securities. The disclosure of yield to call or yield to maturity is the long-standing practice of the municipal securities industry and this practice is reflected in rule G-15(a) which requires dealers to disclose yield to call or yield to maturity on customer confirmations. A customer who purchases a municipal security relying only on the current yield information disclosed in an advertisement would be confused upon receipt of the confirmation when the yield to call or yield to maturity of the security is different. Moreover, a customer would not be able to compare municipal securities advertised at a current yield with those advertised at a yield to call or yield to maturity. The Board determined that the use of current yield information in municipal securities advertisements without other yield information would be materially misleading under rule G-21. Thus, dealers may not show only current yield in municipal securities advertisements.

The Board also determined that, while showing only current yield information in advertisements is materially misleading, if advertisements also include, at a minimum, the lowest of yield to call or yield to maturity, current

yield may be used if all the information is clearly presented as discussed below. The Board notes that including yield to call or yield to maturity in municipal securities advertisements would give customers a more realistic view of the yield they can expect to receive on the investment and would enable them to compare the security advertised with other municipal securities. In addition, the yield to call or yield to maturity information would be consistent with the yield information disclosed on customer confirmations. If the yield to call is used, the call date and price also should be noted.

The Board is concerned that, even if dealers comply with this interpretation of rule G-21 and include current yield and other yield information in municipal securities advertisements, such advertisements still could be misleading due to the size of type used and the placement of the information. For example, it would not be appropriate for the type size of the current yield to be larger than other yield information. Thus, whether a particular advertisement is materially misleading requires the appropriate regulatory body, for example, an NASD District Business Conduct Committee, to consider a number of objective and subjective factors. The Board urges the regulatory authorities to continue to review advertisements on a case-by-case basis to make a determination whether any such advertisements, in fact, are misleading.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are—

Designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12977 Filed 6-8-88; 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 27, 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, \$0.01 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 17, 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. 88-12979 Filed 6-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25772; File No. SR-PHLX 88-09]

**Self-Regulatory Organizations;
Approval of Rule Change by the
Philadelphia Stock Exchange, Inc.,
Relating to Value Line Arithmetic
Average Computation**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")¹ and Rule 19b-4 thereunder,² the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on February 26, 1988, a proposed rule change to revise the method of computation of the Value Line Composite Stock Average Index ("XVL Index") underlying index option contracts to an arithmetic average from a geometric average.

The proposed rule change was published for comment in Securities Exchange Act Release No. 25442 (March 10, 1988). No comments were received.

The PHLX has traded the XVL Index utilizing a geometric average computation since January 11, 1985.³ Currently, the XVL Index contracts traded at the PHLX are American style option contracts, although the Commission also has approved the

trading of European style options on the Value Line Index.⁴

The proposed rule change would revise the method of computation of the XVL Index to an arithmetic average from a geometric average. The XVL Index is the only index option that currently is calculated on a geometric average. Geometric averaging tends to underperform an arithmetic average and the geometric averaging of the XVL Index has resulted at times in substantial disparities between prices of the XVL futures and options contracts and the level of the underlying cash index.

The Exchange notes that geometric averaging of the XVL Index has created investor confusion and impedes efforts by market participants to develop precise hedges between the index contracts and their portfolios of underlying common stocks.

Partial accelerated approval of the rule change was granted by the Commission on March 18, 1988 to allow the Exchange to add series of near term arithmetically averaged XVL Index contracts to compliment such series of XVL Index contracts that were listed for trading calculated on a geometric average.⁵ Accordingly, the Exchange has not added any new contract months of the XVL Index calculated on a geometric average and by December 1988 such options contracts will be phased out. Until that time, there may be some arithmetic and geometric series open simultaneously.⁶

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.⁷ The index options currently traded are based on an arithmetic index. The Commission has received no comments on switching the XVL Index to this method of confirmation. Additionally, the Commission notes that the Commodities Futures Trading Commission recently has approved a Kansas City Board of Trade proposal to revise the method of computation of the XVL future to an arithmetic average from a geometric average. The

Commission believes that adopting a corresponding change for index options contracts trading on the PHLX will facilitate market participants ability to hedge their respective options and futures positions with index products that are based on a uniformly calculated index.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Dated: June 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12978 Filed 6-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16422; 812-6997]

**Applications, Hearings,
Determinations, etc.: HT Insight Funds,
Inc.**

June 3, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: HT Insight Funds, Inc. ("Applicant").

Relevant 1940 Act Sections: Order requested under section 6(c) granting exemptions from sections 13(a)(2), 18(f)(1) and 22(f) and (g) of the 1940 Act and pursuant to section 17(d) and Rule 17d-1 thereunder permitting certain arrangements.

Summary of Application: Applicant seeks an order (i) under section 6(c) of the 1940 Act exempting the proposed deferred compensation plan for directive (the "Plan") to be adopted by Applicant and all future investment companies to which Lazard Freres & Co., its affiliates or its subsidiaries may serve as investment advisers, principal underwriters, administrators and/or sponsors (the "Companies"), from sections 13(a)(2), 18(f)(1) and 22(f) and (g) of the 1940 Act; and (ii) under section 17(d) of the 1940 Act and Rule 17d-1 thereunder permitting certain transactions to be effected by the Companies and certain of their directors pursuant to the Plan.

Filing Date: The application was filed on February 26, 1988, and amended on June 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19-4 (1987).

³ Trading the XVL Index utilizing a geometric average computation was approved in Securities Exchange Release No. 21392 (October 10, 1984) 49 FR 40987.

⁴ See Securities Exchange Release No. 24508 (May 22, 1987) 52 FR 20658. An American style option may be exercised by its holder anytime before expiration. A European style option, however, can be exercised only on the last trading day prior to its expiration.

⁵ See Securities Exchange Release No. 24585 (March 18, 1988) 53 FR 9722.

⁶ The Exchange has disseminated information to minimize confusion between products during this overlay period.

⁷ 15 U.S.C. 78f (1982).

⁸ 15 U.S.C. 78s(b)(2) (1982).

⁹ 17 CFR 200.30-3(a)(12) (1986).

will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC 450 5th Street NW., Washington, DC 20549. Applicant, One Rockefeller Plaza, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is an open-end, diversified investment company that currently has five investment portfolios: HT Insight Government Fund, HT Insight Management Fund, HT Insight Tax-Free Money Market Fund, HT Insight Convertible Fund and HT Insight Equity Fund (collectively referred to as the "Funds"). HT Insight Government Fund (the "Government Fund"), HT Insight Cash Management Fund (the "Cash Fund"), and HT Insight Tax-Free Money Market Fund (the "Tax-Free Fund") (collectively, the "Money Market Funds") are money market funds that seek to provide investors with as high a level of current income (which, in the case of HT Insight Tax-Free Money Market Fund, is exempt from federal income taxes) as is consistent with their investment policies and with preservation of capital and liquidity. HT Insight Convertible Fund (the "Convertible Fund") seeks to provide investors with capital appreciation and current income. Capital preservation also is an objective. HT Insight Equity Fund (the "Equity Fund") seeks to provide investors with capital appreciation. Current income is a secondary objective.

2. Applicant's board of directors consists of eight directors, a majority of

whom are not "interested persons" of Applicant within the meaning of section 2(a)(19) of the 1940 Act. Each of the directors who is not an employee of Lazard Freres & Co. ("Lazard"), the sponsor, administrator and distributor of Applicant, Harris Trust and Savings Bank, the investment adviser, or their respective affiliates, receives from Applicant an annual retainer fee of \$800 for services as a director. In addition, directors of Applicant are paid a fee of \$200 for each board and/or committee meeting they attend. Applicant pays no other remuneration to its directors or officers. The amounts paid to the directors are, and are expected to continue to be, insignificant in comparison to the total net assets of Applicant.

3. The purpose of the Plan is to permit individual directors to elect to defer receipt of their directors' fees, in order to avoid diminution or loss of Social Security benefits to which directors may otherwise be entitled, to enable the directors to defer payment of income taxes on such fees, or for other reasons. Applicant further believes that the availability of such a deferred fee arrangement will enhance its ability to attract and retain directors of high caliber.

4. The Plan will allow an individual director to elect to defer receipt of the annual retainer or meeting fees or both that otherwise would become payable for services performed as a director or committee member after the effective date of the election. The election must be made in writing prior to, and will take effect as of, the beginning of the calendar year, or in the case of any director elected to the board in the year the Plan takes effect, or for a director elected in other than the last calendar quarter of a year, the beginning of the calendar quarter immediately following. The election shall continue in effect until terminated by notice in writing, such termination to take effect on the first day of the calendar year beginning after receipt of the notice of termination. An election shall be irrevocable as to payments deferred in accordance with the election.

5. Each deferred fee will be credited at the time when it otherwise would have been payable to an account on Applicant's books that will be established for each electing director. All amounts in such an account (including interest credited thereto) will bear interest at a rate equivalent to the rate applicable to 90-day U.S. Treasury Bills as determined at the beginning of each calendar quarter. Interest will be credited to the account quarterly at the end of each calendar quarter. Amounts

in the account will not be evidenced by any note or other security or funded or secured in any way. The Fund's obligation to make payments of amounts accrued under the Plan will be a general unsecured obligation payable solely from the Fund's general assets and property.

6. All amounts credited to a deferred payment account pursuant to a proper election by a director shall be paid to the director on (i) the first business day of the year in which the director attains the age of 70, or (ii) the first business day of the year next succeeding the year in which the director ceases to serve as a member of the board of directors.

7. The director may elect to receive all amounts credited to the account in one lump-sum payable on the first business day of the calendar year in which payment is to be made, or in 10 or fewer installments, which installments are payable on the first business day of each year commencing with the calendar year in which payment is to begin, as per the director's specifications in making the election. If the payment is to be made in installments, the amount of each installment shall be equal to a fraction of the total amount credited to the director's account at the time of payment, the numerator of which shall be one and the denominator of which shall be the remaining number of unpaid annual installments.

8. If the director dies at any time before all amounts in the account have been paid, Applicant shall make one lump-sum payment to such person or persons as the director shall designate in the written notice of election filed with Applicant, or in the absence of such designation, to the director's estate. No deferred amount or unpaid portion thereof may be transferred or assigned by a director except as per a written designation to take effect upon the death of the director, or the laws of descent and distribution.

9. Deferral of director's fees in accordance with the Plan will have a negligible effect on Applicant's assets, liabilities, net assets and net income per share. Furthermore, the Plan will not obligate Applicant to retain a director in such a capacity, nor will it obligate Applicant to pay any (or any particular level of) director's fees to any director. Rather, it merely permits a director to elect to defer receipt of director's fees that he would otherwise receive on a current basis from Applicant.

10. Participation in the Plan will be limited to those directors who are not "interested persons" of the Applicant within the meaning of section 2(a)(19) of the 1940 Act. Therefore the deferred fee

arrangement will be available to all directors who receive director's fees from Applicant, i.e., the directors who are not employees of Harris Trust and Savings Bank, the Funds' Investment Adviser, or Lazard or their respective affiliates. It is anticipated that the Plan will be made available to directors of future Companies that may be added to the group of investment companies to which Lazard serves as investment adviser, sponsor, administrator and/or distributor.

11. Applicant contends that the effect of the Plan would be to defer the payment of fees that Applicant otherwise would be obligated to pay on a current basis as services are performed by the director. Applicant further contends that liabilities created by the credits under the agreement would be offset by essentially equal fund assets, which would not otherwise exist if the trustee's fees were paid on a current basis. Applicant contends that there is no expectation of profits being generated through Applicant or other investments on behalf of a director since Applicant would be undertaking no funding or investment commitment under the Plan and the interest earned by the director during the deferral period would not be tied to Applicant's investment performance.

12. Applicant submits that the exemption requested is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that participation in the plan would not be less advantageous to the company than to its participating directors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12980 Filed 6-8-88; 8:45 am]

BILLING CODE 9010-01-M

DEPARTMENT OF STATE

[Public Notice 1064]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1989 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering national,

competitive programs under the Soviet and Eastern European Research and Training Act. All grants will be annual and based on an open, national competition among applying organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in fiscal year 1989 under a program administered by the Department of State.

Organization of Notice

This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 16, 1988.

Applications Delivered by Mail

An application sent by mail must be addressed to E. Raymond Platig, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street NW., Washington, DC 20009.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial center.
- (4) Any other proof of mailing acceptable to the U.S. Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail.

Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of State, INR/RES, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street, NW., Washington, DC.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions.

The full purposes of the Act and the eligibility requirements are set forth in Pub. L. 98-164, Title VIII, 97 Stat. 1047-50. Under Title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the field of Soviet and Eastern European and related studies. Applying organizations or institutions should have the capability to conduct *competitive award programs that are national in scope*. Programs of this nature are those that make awards which are based upon

an open, nationwide competition incorporating peer group review mechanisms. Applications sought are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the Soviet Union and Eastern Europe by proposing:

(1) *National programs* which award contracts to American institutions of higher education or not-for-profit corporations in support of postdoctoral or equivalent level research projects, such contracts to contain shared-cost provisions;

(2) *National programs* which offer graduate, postdoctoral and teaching fellowships for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Soviet, Eastern European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the Soviet Union and Eastern Europe in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Moreover, support for publications, library activities and conferences will be constrained by the following policies:

—*Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in unique or special circumstances, in which cases the funds should be supplied by peer-review organizations with national competitive programs.

—*Library Activities.* Title VIII funds should not be used for library preservation, cataloging or modernization. However, a national peer-review organization with Title VIII funds could offer modest support to efforts directed toward developing an effective, long-term and well-coordinated strategy to address the serious library needs of the field.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the qualitative improvement of the professional cadres in the field. Therefore, Title VIII grants generally should not be made solely to support a particular conference or series of conferences. Rather conference funding should come from one or more of the national peer-review organizations receiving Title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area, though with emphasis on the USSR.

Part III

Available Funds

Congress has authorized and the President has requested for Fiscal Year 1989 \$5.0 million for the Title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the bill appropriating funds for the Department of State.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made over two or more years.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which

should not exceed 20 double-spaced pages. This must be accompanied by a one or two page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, though bulky submissions are discouraged.

Budget

Applicants should familiarize themselves with OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements," and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A-21, "Cost Principles for Educational Institutions," or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct administrative expenses by program element, and indirect costs. *NB* Indirect costs are limited to 10 percent of total grant agreements. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested Title VIII grant funds;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) Whether payment is requested on a reimbursable basis or by advance methods; re the latter, for grants above \$125,000, advance funds will be made through a letter of credit, but if less than \$120,000, advance of funds will be made by Treasury checks through wire transfers;

(5) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *Part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type

the applicant proposes in the Soviet-Eastern European field (40 point); and (3) Budget and cost effectiveness (20 points).

Further Information

For further information, contact Dr. E. Raymond Platig, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR/RES, U.S. Department of State, Washington, DC 20520. Telephone: (202) 632-2025 or 632-5924.

Dated: May 25, 1988.

E. Raymond Platig,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 88-12931 Filed 6-8-88; 8:45 am]

BILLING CODE 4710-32-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-59]

Termination of Section 301 Investigation; India's Restrictions on Access for Almond Imports

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to terminate an investigation under section 301.

SUMMARY: On Feb. 20, 1987, the U.S. Trade Representative initiated an investigation of India's policies and practices with respect to the importation of almonds. On May 31, 1988, the United States and the Government of India reached agreement on providing enhanced access to the Indian market for imported almonds. 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: Peter Collins, Office of Asia and the Pacific, (202) 395-6813, Richard Parker, Office of the General Counsel, (202) 395-6800, or Ellen Terpstra, Office of Agricultural Affairs, (202) 395-5006, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On Jan. 6, 1987, the California Almond Growers Exchange 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 India engages in acts, policies, and practices that are unreasonable or discriminate against imports and burden or restrict U.S. commerce.

On Feb. 20, 1987, the U.S. Trade Representative initiated an investigation of the Indian government's policies and

practices affecting efforts to obtain fair and equitable access to the Indian market for almonds (52 FR 6412). The United States and India have concluded an agreement providing enhanced access to the Indian market for almonds, which will take effect in the current Indian fiscal year. Since this dispute has been satisfactorily resolved, we have terminated the investigation.

Judith Hippler Bello,

General Counsel.

[FR Doc. 88-12972 Filed 6-8-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; City of Wilmington, New Hanover County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for a proposed highway project in the City of Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2850.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare a supplemental final environmental impact statement (EIS) on a proposal to construct a four-lane divided roadway in Wilmington, North Carolina. The original EIS for the improvements (FHWA-NC-EIS-77-03-F) was approved on September 24, 1980. The proposed improvements provided for a four-lane partial access control highway on new location from US 117 (Castle Hayne Road) to US 74 (Eastwood Road) including a Downtown Spur beginning at Water Street northward to US 117. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand.

Subsequent to approval of the Final EIS in 1980, several changes in the recommended alignment have evolved. The Supplemental EIS will address these alignment changes with respect to traffic conditions and environmental aspects such as wetland encroachments, noise, and air quality analysis. The overall project area demographic and

municipal planning data will also be updated.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting with neighborhood groups and local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft supplemental EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

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 EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.295, 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: June 3, 1988.

Roy Shelton,

District Engineer, FHWA Raleigh, North Carolina.

[FR Doc. 88-13066 Filed 6-8-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Initial Determination of Noncompliance With Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, Contained in Trucks Manufactured by Mercedes Benz Truck Co.

The National Highway Traffic Safety Administration (NHTSA) has issued an initial determination, pursuant to section 152(a) of the National Traffic and Motor Vehicle Safety Act (the Safety Act), 15 U.S.C. 1412(a), that model L1317 trucks manufactured by Mercedes-Benz Truck Company between February 29, 1984 and December 17, 1985 fail to comply with the Brake Power and Brake Recover requirements of Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, 49 CFR 121.5.4.2 and 5.4.3. NHTSA has noted that the brake systems of the subject vehicles would not meet the deceleration and stopping requirements of these sections of Standard No. 121 in testing on a

dynamometer when the dynamometer load equivalent is set at the subject trucks' rear axle Gross Axle Weight Ratings.

Mercedes has advised NHTSA that it manufactured and sold model L1317 3,309 trucks having the brake system that is the subject of this initial determination.

The Associate Administrator for Enforcement of NHTSA notified Mercedes of the agency's initial determination by letter dated June 1, 1988. In a letter dated June 2, 1988, Mercedes furnished notification to NHTSA that in response to the NHTSA initial determination Mercedes has decided to provide notification of the agency's determination to owners and to offer owners a modification of the subject vehicles consisting of appropriate amendments to the gross axle weight ratings of the vehicles and, upon request of the owners, installation of rear brake chambers having greater capacity than that of the brake chambers furnished as original equipment. Mercedes also stated its intention to comply with the requirements of 49 CFR Parts 573 and 577, which provide for manufacturers' notification of noncompliances to the agency and to owners and it stated its agreement that NHTSA could, in any subsequent proceeding with respect to the notification and remedy campaign, treat the initial determination of noncompliance as having the same effect as a final determination of noncompliance pursuant to section 152(b) of the Safety Act, 15 U.S.C. 1412(b).

NHTSA has placed a copy of the information on which its initial determination is based in the public file of the agency, located at Room 5103, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued on June 6, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-13007 Filed 6-6-88; 4:29 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

[Number 100-02]

The Office of the Inspector General and Delegation of Authority to the Inspector General

Dated: May 3, 1988.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b), and 5 U.S.C. 301 and 302, it is hereby ordered that:

1. Establishment of the Office of the Inspector General (OIG)

a. There is hereby established within the Department of the Treasury, *the Office of the Inspector General*, which shall conduct and supervise audits and investigations relating to programs and operations within the Department as detailed in this order.

b. *The Office of the Inspector General* shall also provide leadership and coordination and recommend policies for activities designed to:

(1) Promote economy, efficiency, and effectiveness in the administration of Departmental programs and activities;

(2) Prevent and detect fraud, waste, and abuse in Departmental programs and operations; and

(3) Inform the Secretary and Deputy Secretary of any problems or concerns with the administration of such programs and operations and the need for the progress of corrective action.

c. *The Office of the Inspector General* shall be independent of all other offices and bureaus within the Department.

d. *The head of the Office of the Inspector General* shall be the Inspector General (IG) who shall be appointed by the Secretary of the Treasury and who shall report to and operate under the general supervision of the Secretary and/or the Deputy Secretary.

e. *No officer or employee of the Department* shall prevent the Inspector General from initiating, carrying out, or completing any duly authorized audit or investigation, or prevent any duly appointed officer or employee of the Office of the Inspector General from obtaining access to any information or documentation which the Inspector General has determined is necessary to the execution of an audit or investigation.

2. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Investigations

a. *The Inspector General* is hereby delegated the authority to receive, analyze and evaluate allegations of illegal acts, violations of the Rules of Conduct of the Treasury Department and of the bureaus, violations of the merit system, and any other misconduct concerning any official or employee of any Treasury office or bureau or, in the case of alleged illegal acts or misconduct, and Treasury contractor, subcontractor, or offeror.

b. *All employees and officials of the Department of the Treasury* shall report to the Inspector General all matters which they believe raise questions of illegality or wrongdoing pursuant to paragraph a. above. Employees and

officials who work in bureaus or offices with internal affairs or inspection offices, shall report such matters either to the head of those offices or to the Inspector General.

c. *The Inspector General* is hereby delegated the authority to initiate, organize, conduct, direct and control investigations of any allegations received pursuant to paragraph a. above, concerning the Department's senior officials, i.e., Presidential appointees, SES members, and GS or GM-15s and above.

d. If the allegation to be investigated involves a non-senior official or employee of a Treasury law enforcement bureau, the Inspector General shall refer the investigation to that bureau's internal affairs or inspection office and shall receive a full report of the investigation and any action taken on the matter referred.

e. If the allegation to be investigated involves a non-senior official or employee of a Treasury bureau or office that does not have an internal affairs or inspection office, the Inspector General may refer the investigation to a bureau which has such an office, which will undertake the investigation and will prepare a full report for the Inspector General of the investigation and of any action taken on the matter referred.

f. Paragraphs d. and e. above notwithstanding, the Inspector General shall conduct any investigation which he or she is directed to conduct by the Secretary or Deputy Secretary concerning any allegation of misconduct by an official, employee or contractor of the Treasury. The Inspector General may also conduct any investigation which involves alleged notorious conduct or other matter which, in his or her opinion, is especially sensitive or of Departmental significance.

g. If an allegation involves a matter which is appropriate for the Departmental or a bureau grievance or appeal procedure, or other routine management action, the Inspector General may refer such matter to the appropriate office or bureau for handling.

h. This Order does not change or reduce the authority of Treasury offices or bureaus which had established internal affairs and inspection offices as of July 18, 1978, to conduct investigations in accordance with their own internal procedures, with the exception of those investigations being conducted by the Inspector General. However, when the Inspector General gives notice to a bureau or office that an OIG investigation is being conducted in that bureau or office, no internal

investigation will be initiated and any ongoing investigation into the same matter will immediately cease.

i. *All law enforcement bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current investigative activities.

j. *The Inspector General* may review, evaluate, and approve all departmental and bureau programs, plans, policies and operations for investigative misconduct and may make recommendations for changes.

k. *The Inspector General* shall require, receive, review, and analyze all reports informing the Secretary or Deputy Secretary of any significant problems, abuses, or deficiencies disclosed in any bureau or office investigation and the actions taken to correct them.

l. *The Inspector General* may, at his or her discretion, report the results of the investigation of any senior official to the Secretary or Deputy Secretary or other appropriate management official for action.

m. *The Inspector General* is hereby delegated authority to receive all matters referred to the Department of the Treasury by the Special Counsel of the Merit Systems Protection Board, regarding allegations or prohibited personnel practices. He or she may investigate such matters or, as appropriate, may refer such matters for investigation to a law enforcement bureau internal affairs or inspection office, except for matters concerning the Internal Revenue Service (IRS), which shall be referred directly to that bureau.

n. *The Inspector General* shall receive and review reports of investigations by any bureau or office conducting such investigations, except for IRS, and may prepare or delegate to the appropriate bureau or office for preparation, final reports to the Special Counsel for review and signature of the Deputy Secretary or Under Secretary as the Secretary's designees, except for IRS which shall prepare its own final reports to the Special Counsel.

3. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Audits

a. *The Inspector General* is hereby delegated complete authority for performing internal audits of all Treasury bureaus and offices, with the exception of the law enforcement bureaus. The law enforcement bureaus are the: Internal Revenue Service, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and U.S. Secret Service.

b. *The Inspector General* may audit or authorize law enforcement bureau

internal affairs or inspection offices to audit any Treasury program, activity, or function, including any Treasury or bureau contractor, subcontractor, or offeror.

c. *The Inspector General* shall coordinate all requests submitted by IGs from other Government departments and agencies for audits services within the Department.

d. *The Inspector General and, as appropriate, the Heads of Internal Audit in the law enforcement bureaus* shall distribute copies of final audit reports to all headquarters and field officials responsible for taking corrective action on matters covered by those reports.

e. *The Inspector General* shall keep the Secretary or Deputy Secretary informed of any significant problems, abuses, or deficiencies disclosed in audits and the actions taken to correct them.

f. *The Inspector General* is responsible for formulating Departmental audit policies and priorities and assuring implementation of Federal audit standards in the Department.

g. *The Inspector General* may review, evaluate, and approve law enforcement bureau internal affairs and inspection offices' programs, plans, policies, reports and operations for internal auditing and may make recommendations for changes.

h. *The Inspector General* shall receive and may review and analyze all law enforcement bureau internal affairs and inspection offices' audit plans and reports as a basis for evaluating audit services to management.

i. *All law enforcement Bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current audit activities.

4. Authority of the Inspector General for Intelligence Activities

a. Pursuant to section 4 of Executive Order 12334, *the Inspector General shall, together with the General Counsel*, to the extent permitted by law, report to the President's Intelligence Oversight Board, concerning intelligence activities that he or she has reason to believe may be unlawful or contrary to Executive order or Presidential directive.

b. *All Treasury employees* shall report to the Inspector General, the General Counsel, or the head of the inspection or internal affairs office of their bureau, any matters which they believe raise questions or propriety or legality under Executive Order 12333.

c. At appropriate intervals, *The Inspector General* shall review any

foreign intelligence activities of the Treasury Department to determine whether any such activities raise questions of propriety under Executive Order 12333. Any questions arising from this review as to the legality of such activities shall be referred to the General Counsel.

d. *All law enforcement bureau internal affairs and inspection offices* shall review at appropriate intervals the activities of their bureaus in their relations with the United States foreign intelligence agencies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be reported to the Inspector General who shall refer to the General Counsel any illegal activities.

5. Personnel Authority

a. *The Inspector General* may obtain as needed, under procedures he or she develops, investigative, audit, and support personnel from law enforcement bureau internal affairs and inspection offices for conducting investigations or audits under his or her direct supervision. Any detailed personnel shall remain on the rolls of the service or office from which they were detailed but will report exclusively to the Inspector General regarding the matter being investigated or audited.

b. *Bureau heads* shall consult with the Inspector General in recruiting and selecting candidates to head the internal affairs or inspection offices of the law enforcement bureaus. Bureau heads shall, prior to issuance, submit annual performance evaluations of incumbent heads of internal affairs or inspection offices to the Inspector General for review.

6. Regulatory Authority

The Inspector General is hereby delegated authority to promulgate any rules, regulations, directives, memoranda of understanding, policies and procedures necessary to implement his or her duties and responsibilities pursuant to this Order.

7. Cancellation

Treasury Order 100-02, "Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General," dated January 13, 1987.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 88-12954 Filed 6-8-88; 8:45 am]

BILLING CODE 4810-25-M

[Number 100-03]

Functions of the Executive Secretariat

Date: May 27, 1988.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b), and 5 U.S.C. 301, it is hereby ordered that the functions and responsibilities of the Executive Secretariat, including the Executive Secretary, the Special Assistant to the Secretary (National Security), the Secretariat staff, and the Office of Intelligence Support (OIS), are as follows:

1. *The Executive Secretariat* shall perform the following:

a. Receive, screen, assign action for, and maintain records on all official correspondence addressed to the Secretary and Deputy Secretary;

b. Review all materials submitted to the Secretary and Deputy Secretary for completeness, quality and coordination with other offices; and

c. Coordinate execution of tasks involving various offices within the Department, as directed by the Secretary or Deputy Secretary.

2. In addition to the above responsibilities, *the Executive Secretary* shall:

a. Coordinate briefings for the Secretary and Deputy Secretary;

b. Maintain direct liaison with the White House Staff Secretary, the Cabinet Secretary, the Executive Secretary of the National Security Council, and the Executive Secretaries (or equivalent) of the Cabinet Departments;

c. Assist the Secretary and Deputy Secretary with coordination of the Department's policy development;

d. Carry out special tasks as assigned by the Secretary or Deputy Secretary;

e. Clear all Congressional testimony;

f. Approve transmittal of all regulations to the Federal Register; and

g. Review all press releases.

3. *The Special Assistant to the Secretary (National Security)* will report to the Secretary and Deputy Secretary. For purposes of administrative and managerial control, the Special Assistant to the Secretary (National Security) and the Office of Intelligence Support (OIS) will be part of the Executive Secretariat. The Special Assistant to the Secretary (National Security) (hereinafter the Special Assistant) will:

a. Provide day-to-day intelligence support to the Secretary and other officials;

b. Represent Treasury on intelligence community committees and maintain continuous liaison with elements of the community;

c. Review and coordinate all agreements and arrangements governing Treasury activity in support of one or more agencies within the Intelligence Community, as defined in Executive Order 12333, and for any Intelligence Community activity in support of one or more subordinate organizational units of the Treasury Department.

(1) Any proposed agreement or arrangement involving one or more Treasury agencies acting either on a recurring or ad hoc basis in support of one or more Intelligence Community agencies, or vice versa, shall be reduced to writing and transmitted to the Special Assistant, who shall consult with the General Counsel before submitting the agreement or arrangement to the Secretary or Deputy Secretary for review and approval.

(2) The Special Assistant is authorized to review and monitor, at his discretion, all such agreements and arrangements now in effect, and to report to the Secretary or Deputy Secretary on a continuing basis regarding their status.

(3) In exigent circumstances, the Special Assistant can approve requests of a noncontroversial nature made under subparagraph (1). As soon as possible thereafter, the Special Assistant shall consult with the General Counsel and submit the approved request to the Secretary or Deputy Secretary for review and concurrence.

(4) Subordinate organizational units of the Treasury Department shall notify the Special Assistant each time they act pursuant to any agreement approved under this or any predecessor Order.

(5) This Order shall not affect in any way the normal reporting relationships and operational responsibilities of Treasury officials. This Order does not apply to the routine exchange between the Intelligence Community and the Treasury Department of substantive intelligence information and recurring reports.

4. *The Office of Intelligence Support (OIS)*, under the direction of the Special Assistant, will:

a. Screen and distribute to appropriate Treasury officials relevant State Department telegrams;

b. Prepare daily cable summaries and regular wire service news summaries on items of issues to Treasury officials;

c. Screen and distribute intelligence reports and publications to appropriate Treasury officials; and

d. Provide other intelligence support to the Secretary and other Treasury officials as appropriate.

5. *Cancellation.* This Order supersedes Treasury Orders (TO):

a. Paragraphs 4.e., 4.f. and 4.g. of TO 100-02, "Establishment of the Office of the Inspector General and Delegation of

Authority to the Inspector General," dated January 13, 1987; and

b. TO 100-03, "Functions of the Executive Secretariat," dated January 13, 1987.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 88-12955 Filed 6-8-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service**Art Advisory Panel; Closed Meeting**

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held July 6 and 7, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566-9259, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on July 6 and 7 in Room 7005 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of § 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in § 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-12984 Filed 6-8-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 111

Thursday, June 9, 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).

COMMISSION ON CIVIL RIGHTS

June 7, 1988.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, June 17, 1988, 9:00 a.m.-5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of April and May Meetings
- III. Staff Director's Report
 - A. Status of Earmarks
 - B. Personnel Report
 - C. Activity Report
- IV. Proposed Project Concept: Hearing on Congressional Exemption from Civil Rights Laws
- V. Resolution: Restrictions on Commissioners' and Special Assistants' Days
- VI. Resolution: Conduct of Future Commission Meetings
- VII. Regional Forums: Update
- VIII. Voting Rights Panel: Alabama, Louisiana, Mississippi, and Missouri
- IX. SAC Report: "Minority Political Participation in Selected Alabama Jurisdictions"
- X. SAC Report: "Bigotry and Violence in Illinois"
- XI. SAC Report: "Missouri Human Rights Agencies"
- XII. SAC Report: "Desegregating Cabrini-Green"
- XIII. SAC Recharter

PERSON TO CONTACT FOR FURTHER

INFORMATION: John Eastman, Press and

Communications Division, (202) 376-8312.

William H. Gillers,

Solicitor, 376-8514.

[FR Doc. 88-13130 Filed 6-7-88; 3:15 pm]

BILLING CODE 6335-01-M

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 18651, May 24, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 6, 1988.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Special Meeting of November 23, 1987.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Docket re: TCM-195b, Revision 1, Emergency Feed Program.
4. Memorandum re: Section 416(b) Revised Fiscal Year 1988 Commodity Determination.
5. Memorandum re: Public Law 480 for Fiscal Year 1988 (CZ-266, Resolution No. 25, Amendment 3).
6. Resolution re: Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1988, CZ-266, Resolution No. 25, Amendment 1, Amendment 2, Amendment 3, and Amendment 4.
7. Resolution re: Ratification of the Secretary's Approval of Export Sales of CCC-Owned Dairy Products for Export During Fiscal Year 1988.

CONTACT PERSON FOR MORE

INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475-5490.

Dated: June 6, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88-13098 Filed 6-7-88; 2:19 pm]

BILLING CODE 3410-05-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday June 14, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 16, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Setting of Dates for Future Meetings.
- Correction and Approval of Minutes.
- Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
- Draft AO 1988-16—Michael A. Nemeroff on behalf of the American Medical Association and the American Medical Political Action Committee.
- Draft AO 1988-20—Jack Quin on behalf of Glaxo, Inc.
- Draft AO 1988-22—J. Miles Reid on behalf of San Joaquin Valley Republican Associates.
- Draft AO 1988-23—Stephen Finley.
- Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88-13124 Filed 6-7-88; 2:52 p.m.]

BILLING CODE 6715-01-M

Corrections

Federal Register

Vol. 53, No. 111

Thursday, June 9, 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.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 80-90]

Radio Broadcasting Services

Correction

In rule document 87-23983 beginning on page 39774 in the issue of Friday, October 23, 1987, make the following correction:

§ 73.202 [Corrected]

On page 39779, in the first column, in § 73.202(b), in the table for "Iowa", the Channel number for "Atlantic" should read "279C1".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Correction

In notice document 88-12670 appearing on page 20687 in the issue of Monday, June 6, 1988, make the following correction:

In the third column, in the second line, "failed" should read "filed".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400

[OMB-14-F]

Medicare and Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations

Correction

In rule document 88-10083 beginning on page 16267 in the issue of Friday, May 6, 1988, make the following corrections:

1. On page 16268, in the third column, in the table, under "Current OMB control numbers", the 15th entry should read "0938-0386".

2. On the same page, in the same column, in the table, under "Sections in

42 CFR that contain collections of information", in the 15th line from the bottom, "417.596, 417.598" should read "417.596-417.598".

13. On the same page in the same column, in the seventh line from the bottom, "431.56" should read "431.55".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit Program; Lower Living Standard Income Level

Correction

In notice document 88-10754 beginning on page 17258 in the issue of Monday, May 16, 1988, make the following corrections:

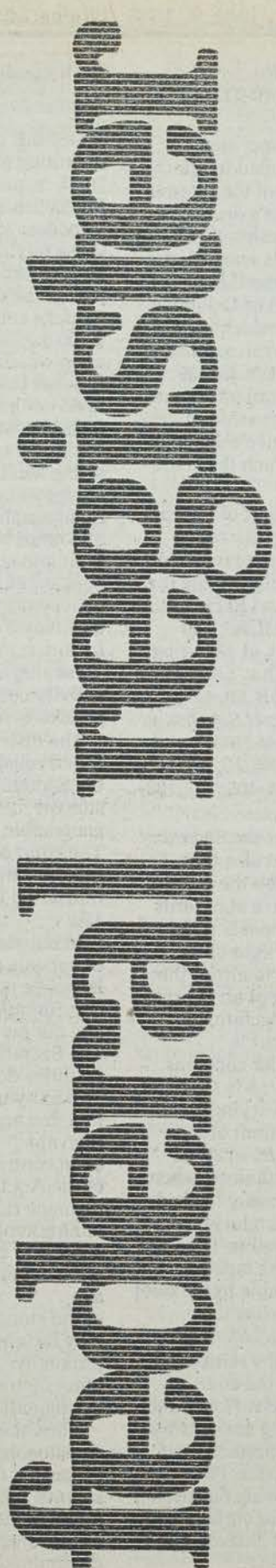
1. On page 17259, in the second column, in Table 3, in the first column, in the third line "Baltimore, MA" should read "Baltimore, MD".

2. On page 17260, in Table 4, in the first column, in the fifth line, "(4,440)" should read "(4,740)". Also in Table 4, in the second column, in the fourth line, "(7,760)" should read "7,760".

3. On the same page, in the second column, the signature should read Roberts T. Jones.

BILLING CODE 1505-01-D

Thursday
June 9, 1988



Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701 etc.

Permanent Regulatory Program; Surface Mining Activities; Underground Mining Activities; Bond and Insurance Requirements; Performance Standards; Notice of Reinstatement of Suspended Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 800, 816 and 817

**Permanent Regulatory Program;
Surface Mining Activities;
Underground Mining Activities; Bond
and Insurance Requirements;
Performance Standards**

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reinstatement of suspended rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior is reinstating eight suspended rules that were upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *NWF v. Hodel*. These rules had been suspended by OSMRE in response to decisions issued by the U.S. District Court for the District of Columbia in *In Re: Permanent II*. Generally, the rules concern the definition of support facilities, incremental bonding, phased bonding, the retention of highwalls in permanent impoundments, coal waste refuse pile compaction, and the construction of coal waste refuse piles using lifts greater than two feet thick.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Richard O. Miller, Chief, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202-343-5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Reinstated Rules
- III. Procedural Matters

I. Background

On February 21, 1985 (50 FR 7274), and November 20, 1986 (51 FR 41952), OSMRE published in the *Federal Register* two notices suspending certain portions of its permanent program rules. On July 10, 1985 (50 FR 28186), OSMRE also published in the *Federal Register* an interim final rule which, among other things, suspended the definition of support facilities at 30 CFR 701.5. These rules were suspended in response to decisions issued by the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (In Re: Permanent II)*, 21 ERC 1193 (D.D.C. 1984) (*Round I*); 21 ERC 1724 (D.D.C. 1984) (*Round II*); 22

ERC 155.7 (D.D.C. 1985) (*Round III-VER*); and 629 F. Supp. 1519 (D.D.C. 1985) (*Round III*).

As noted in the two suspension notices, neither was intended to affect the right of the Secretary of the Interior to appeal the district court's decisions on any of the suspended rules. 50 FR 7274; 51 FR 41952. Appeals were filed, and on January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision which upheld a number of the suspended rules. *NWF v. Hodel*, No. 84-5743 (D.C. Cir. Jan. 29, 1988). As explained in detail under the following heading, II. Discussion of Reinstated Rules, this notice reinstates those suspended rules which the court of appeals upheld.

In *NWF v. Hodel* the court of appeals repeatedly recognized the discretion vested in the Secretary to use reasoned and expert judgment in interpreting the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1201 *et seq.* Slip op. at 43 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)), 59 (citing *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 844-45 (1984); and *Chemical Mfrs. Ass'n v. NRDC*, 470 U.S. 116, 125 (1985)), 80-81, 104-105, 107, 133-134 and 137-138.

On the issue of whether the Secretary is required to promulgate rules that elucidate or elaborate upon the general environmental performance standards of the Act, the court of appeals ruled that "we read the Act, in light of its legislative history * * * to afford the Secretary discretion, absent an express statutory instruction to regulate, to decide whether fleshing out is appropriate in light of other concerns. Chief among those concerns is the need to accommodate widely varying local conditions that will not admit of a single, nationwide rule." *Id.* at 80-81 (footnote omitted). Nevertheless, when proposing to delete previously fleshed-out standards, "if [the Secretary] determines there is no need to 'flesh out' the statute, [he] must 'flesh out' his explanation [in the preamble to the rule] so that [the court] can review the rationality of his decision." *Id.* at 84.

OSMRE will interpret the reinstated rules in accordance with the court of appeals' decision in *NWF v. Hodel*, the notices of final rulemaking under which the rules originally were promulgated, and this reinstatement notice. For convenience, in the following discussion the corresponding rules for surface and underground mining activities are cited together as sections 816/817.

II. Discussion of Reinstated Rules

Section 701.5 Definitions.

OSMRE is reinstating the suspended definition of *Support facilities* at 30 CFR 701.5, as promulgated on May 5, 1983 (48 FR 20392). The reinstated definition provides: "Support facilities means those facilities resulting from, or incident to, an activity identified in paragraph (a) of the definition of 'surface coal mining operations' in § 700.5 of this chapter and the areas upon which such facilities are located. Support facilities may consist of, but need not be limited to, the following facilities: Mine buildings; bath houses; coal loading facilities; coal crushing and sizing facilities; coal storage facilities; equipment and storage facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; facilities used to treat and store water for mine consumption; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including roads. 'Resulting from or incident to' an activity connotes an element of proximity to that activity."

The district court in *In Re: Permanent II* had ruled that the Act does not allow the Secretary to limit the definition of support facilities on the basis of geographic proximity. 21 ERC at 1202. The court of appeals in *NWF v. Hodel* reversed the district court and reinstated the definition. Slip op. at 148-150.

In reinstating the definition, the court of appeals ruled: "The statutory language neither plainly precludes the consideration of distance from the mine site nor dictates a functional test * * *. The Secretary's definition of support facilities does not impose a strict proximity test, but rather considers both function and distance to be relevant * * *. While it would have been contrary to the language and spirit of the Act to promulgate a per se distance rule cutting off coverage of coal mining support facilities otherwise subject to the Act solely because they were not adjacent to or nearby the mine site * * * it is not an irrational reading of the statute to conclude that distance may be 'an element of proximity,' * * * to be weighed among other factors." *Id.* at 149-150 (emphasis in original).

Notwithstanding the court of appeals' decision, however, OSMRE intends to propose a rule removing the definition of support facilities from 30 CFR 701.5. As noted in the July 10, 1985, notice suspending the definition, OSMRE has determined that the definition is not

needed. (50 FR 28187). OSMRE appealed the district court ruling so that even in the absence of a definition proximity could be considered by the regulatory authority in identifying support facilities.

Section 800.11(b) Incremental bonding.

Section 800.13(a)(2) Phased bonding.

OSMRE is reinstating 30 CFR 800.11(b), as promulgated on July 19, 1983 (48 FR 32932), to allow the applicant for a surface coal mining and reclamation permit to post a performance bond for less than the entire permit area. Reinstated paragraph (b)(1) provides: "The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit." Reinstated paragraphs (b)(2) to (b)(4) set out additional bonding procedures for the initial and successive increments of the permit area.

OSMRE also is reinstating 30 CFR 800.11(a)(2), as promulgated on July 19, 1983 (48 FR 32932). Reinstated paragraph (a)(2) provides: "With the approval of the regulatory authority, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under [30 CFR] 800.14 and 800.15. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail."

The district court in *In Re: Permanent II* had ruled that to the extent it allowed the applicant to post a performance bond for an area less than the entire permit term, § 800.11(b) contradicted the Act and its legislative history. 21 ERC at 1744. With respect to § 800.13(a)(2), the district court ruled that the Act "does not give the Secretary authority to break the bond into specific phases of reclamation." *Id.* at 1744. The court of appeals in *NWF v. Hodel* reversed the district court and upheld the rules. Slip op. at 56-62.

In upholding the incremental bonding approach of § 800.11(b) and the phased bonding approach of § 800.13(a)(2), the court of appeals "defer[red] to the reasonable interpretation ultimately proffered by the Secretary," and ruled that section 509(c) of the Act "reasonably could be read by the Secretary to permit his approval of alternative bonding methods that will fulfill the purposes of the Act." *Id.* at 59 (emphasis in original).

In upholding § 800.11(b), the court of appeals ruled: "The district court rejected incremental bonding because the area covered by such a bond could be (and likely would be) smaller than the area to be mined in the course of one permit term. But under the Secretary's prescription, no surface area could be disturbed until the regulatory authority determined that the amount of bond posted for that area was sufficient to assure completion of the reclamation plan in the event of forfeiture. * * * True, the regulation allows an operator to confine bonding ahead to that portion of the permitted area that the operator plans to affect in the near future. But as long as the bond is calculated * * * at the full cost of reclaiming that particular increment of the land, and the size and configuration of the increment * * * are appropriate for efficient reclamation, we do not see how the arrangement appreciably heightens the risk that any land will be left unreclaimed." *Id.* at 60-61.

In upholding § 800.11(a)(2), the court of appeals continued: "Phased bonding, too, measures up to the standard we deem critical. We reiterate that '[t]he total of the phase bonds must be sufficient to cover costs to the regulatory authority to complete the reclamation plan, and bond[s] covering all three phases must be posted before disturbance of the area or increment bonded.'" *Id.* at 61 (citation omitted, brackets in original).

The court of appeals concluded: "In sum, the Secretary reasonably construed § 509(c) of the Act, and responsibly determined that the incremental and phased bonding programs he authorized fulfilled the statutory objective: to ensure, to the extent feasible, completion of the reclamation plan in the event that an operator defaults." *Id.* at 62.

Sections 816.49(a)(9)/817.49(a)(9) Impoundments.

OSMRE is reinstating 30 CFR 816.49(a)(9)/817.49(a)(9), as promulgated on September 26, 1983 (48 FR 43994), to allow the retention of underwater highwalls in permanent impoundments. Reinstated paragraphs (a)(9) provide: "The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users."

The district court in *In Re: Permanent II*, in remanding §§ 816.49(a)(9)/817.49(a)(9) was "wary of permitting highwalls to remain in impoundments under an 'implied' exception to [the approximate original contour (AOC)

requirement of § 515(b)(3) of the Act], when Congress did not even permit the retention of highwalls when granting express exemptions from AOC." 620 F. Supp. at 1571. The court of appeals in *NWF v. Hodel* reversed the district court and reinstated the rules. Slip op. at 134-138.

In upholding §§ 816.49(a)(9)/817.49(a)(9), the court of appeals ruled: "The Act * * * on its face, does not support the district court's interpretation. Unlike the other two AOC variances, the water impoundment grading requirements do not include a highwall elimination requirement. Instead, an operator wishing to create a permanent water impoundment must show, among other things, that 'final grading will provide safety and access for proposed water users.' SMCRA 515(b)(3)(E).

"* * * Congress in this case has not stated that highwalls completely submerged in an authorized impoundment must be removed. The Secretary in turn has considered policies in favor of the general highwall elimination requirement and concluded that they do not necessitate removing those highwalls in every water impoundment case. This is the type of judgment we would expect Congress to leave to the agency given the task of implementing and enforcing their complex regulatory scheme. The district court should have given greater deference to the Secretary's interpretation of the statute." *Id.* at 137-138 (footnote and citation omitted).

Sections 816.81(c)(2)/817.81(c)(2) Coal mine waste: General requirements.

Sections 816.83/817.83 Coal mine waste: Refuse piles.

OSMRE is reinstating 30 CFR 816.81(c)(2)/817.81(c)(2), as promulgated on September 26, 1983 (48 FR 44006), to allow the construction or modification of coal waste refuse piles with compaction that does not attain ninety percent of the maximum dry density determined in accordance with the standard Proctor method, provided they achieve a long-term static safety factor of 1.5. Reinstated paragraphs (c)(2) provide: "The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction."

OSMRE also is reinstating 30 CFR 816.83/817.83, as promulgated on September 26, 1983 (48 FR 44006), to allow the construction of coal refuse piles using lifts of greater than two feet thickness, provided they achieve a long-

term static safety factor of 1.5. The relevant portions of reinstated §§ 816.83/817.83 provide: "Refuse piles shall meet * * * the requirements of * * * [§] 77.215 of [30 CFR]." As explained in the preamble to the final rule: "Construction of the refuse pile in compacted lifts of 2-foot maximum thickness is required under § 77.215 * * *. However, MSHA's [the Mine Safety and Health Administration's] District Manager may approve thicker layers * * * when maintenance of a 1.5 minimum safety factor is supported by engineering data." 48 FR 44015. Under the reinstated rules, layers or lifts thicker than two feet may be used in accordance with § 77.215 when approved by the regulatory authority.

The former rules had provided: "The coal processing waste shall be—(1) Spread in layers no more than 24 inches in thickness; and (2) Compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank." 30 CFR 816.85(c) (1) and (2)/817.85(c) (1) and (2) (1982).

The district court in *In Re: Permanent* // had remanded §§ 816.81(c)(2)/817.81(c)(2), ruling: "The former regulations contained a specific design criteria relative to compaction; the new regulations have rejected that in favor of a performance standard. This is in direct contravention of section 515(f) [of the Act] and, even if the Act leaves discretion with the Secretary for the selection of which design criteria are necessary, the failure to explain the rejection of the previous compaction standard renders the current regulations arbitrary and capricious." 620 F. Supp. at 1536 (footnote omitted). For similar reasons the district court remanded §§ 816.83/817.83 to the extent they allowed the construction of coal refuse piles using lifts of greater than two feet thickness. *Id.* The court of appeals in *NWF v. Hodel* reversed the district court and reinstated both of these rules. Slip op. at 73-78.

In upholding §§ 816.81(c)(2)/817.81(c)(2) and 816.83/817.83, the court of appeals ruled: "The district court remanded revised §§ 816.81 and 816.83 insofar as they fail to provide absolute requirements for lift thickness and post-compaction density, or other satisfactory 'how to' rules * * *. In thus remanding, the district court misconstrued the Act; as [the appellant] no longer contests, the district judge incorrectly read section 515(f) [of the Act] to mandate design standards for

the mine waste at issue, i.e., non-impounding coal mine waste refuse piles. We find that the Secretary did not contravene section 515(f), and that he adequately explained his departures from the earlier regulations; we therefore reverse the district court on this matter." *Id.* at 75 (citation omitted).

On the issue of compaction, the court of appeals continued: "Not only did the Secretary relate how changes in the definition of waste rendered the 1979 rule obsolete; he also addressed the critical concerns motivating adoption of the ninety percent compaction rule in 1979: stability and incombustibility. Stability, the Secretary observed, has always been, and continues to be, assured by the generous 1.5 long-term safety rating. The compaction density standard, he intimated, was a superfluous requirement that unnecessarily burdened mine operators * * *. He concluded, we think reasonably, that '[t]he specific numerical requirement for compaction [density] is * * * more appropriately determined based upon the particular design, site conditions and waste characteristics.'" *Id.* at 76-77 (footnote and citations omitted, brackets in original).

On the issue of lift thickness, the court of appeals concluded: "Given the propriety of eliminating the ninety percent compaction standard, we need not tarry over the Secretary's allowance for variances from the two-foot lift rule. Mine operators must obtain mine regulator approval before constructing a waste disposal site * * *. Lift thickness has regulatory significance only as a means of assuring adequate compaction * * *. It can be expected, therefore, that mine operators will succeed in obtaining a variance from the two foot lift requirement only when compaction adequate to assure stability and incombustibility remain feasible." *Id.* at 77-78 (footnotes and citation omitted).

III. Procedural Matters

Effect of Reinstatement in Federal Program States and on Indian Lands

The reinstated rules apply through cross-referencing in the Federal program States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal Programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. OSMRE also has proposed to implement a Federal program for the State of California. 52 FR 39594 (October 22, 1987).

The reinstated rules apply on Indian lands through cross-referencing in the Federal program for Indian lands at 30 CFR Part 750.

Effect on State Programs

Following reinstatement of these rules, OSMRE will evaluate the permanent State regulatory programs approved under section 503 of the Act to determine whether any changes in these State programs are necessary. If the Director determines that certain State program provisions should be amended to be made no less effective than the reinstated rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

No new information collection requirements that would require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* are imposed by the reinstated rules.

Executive Order 12291

The Department of the Interior has determined, in accordance with the criteria of Executive Order 12291 (February 17, 1981), that the reinstated rules are not major and do not require a regulatory impact analysis for the same reasons that promulgation of the rules in 1983 was not major.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the reinstated rules will not have a significant economic effect on a substantial number of small entities for the same reasons that promulgation of the rules in 1983 did not have such an effect.

National Environmental Policy Act

The publication of this reinstatement notice is categorically excluded from the NEPA (National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*) process by the Department of the Interior Departmental Manual, which at 516 DM 2, Appendix 1.10, excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." None of the exceptions to individual actions within categorical exclusions, listed at 516 DM 2.3A(3), apply to this notice. A Categorical Exclusion Determination for this notice is on file in the OSMRE Administrative Record located at 1100 L Street, NW., Washington, DC.

Author

The author of this notice is Albert A. Kashinski, Branch of Regulatory Programs, Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior, 18th and E Streets, NW., Washington, DC 20240; Telephone: 202-343-5207 (Commercial or FTS).

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement,
Surface mining, Underground mining.

30 CFR Part 800

Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 800, 816 and 817 are amended as set forth below:

Date: June 1, 1988.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

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

Authority: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

§ 701.5 [Amended]

2. In § 701.5, the definition of *Support facilities* is reinstated in full.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER PERMANENT REGULATORY PROGRAMS

3. The authority citation for Part 800 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 95-87, and Pub. L. 100-34.

§ 800.11(b) [Amended]

4. Section 800.11(b) is reinstated in full.

§ 800.13(a)(2) [Amended]

5. Section 800.13(a)(2) is reinstated in full.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

6. The authority citation for Part 816 is revised to read as set forth below, and all other authority citations in Part 816 are removed.

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257), and Pub. L. 100-34, unless otherwise noted.

§ 816.49(a)(9) [Amended]

7. Section 816.49(a)(9) is reinstated in full.

§ 816.81(c)(2) [Amended]

8. Section 816.81(c)(2) is reinstated in full.

§ 816.83 [Amended]

9. Section 816.83 is reinstated in full.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

10. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257), and Pub. L. 100-34.

§ 817.49(a)(9) [Amended]

11. Section 817.49(a)(9) is reinstated in full.

§ 817.81(c)(2) [Amended]

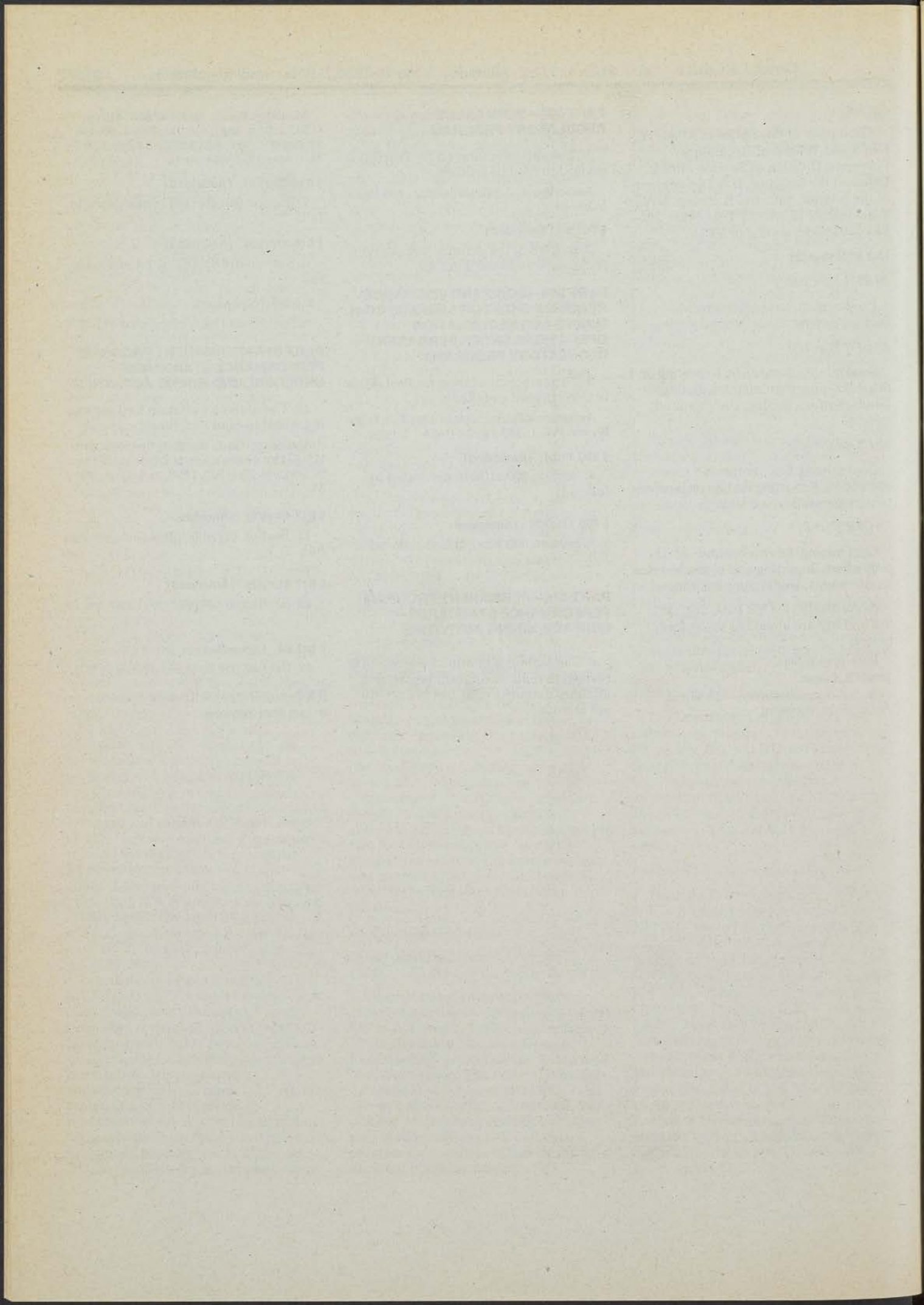
12. Section 817.81(c)(2) is reinstated in full.

§ 817.83 [Amended]

13. Section 817.83 is reinstated in full.

[FR Doc. 88-12894 Filed 6-8-88; 8:45 am]

BILLING CODE 4310-05-M



Thursday
June 9, 1988

Part III

**Department of
Justice**

Office of Justice Programs

**Office of Juvenile Justice and
Delinquency Prevention**

28 CFR Part 31

**Criterion for De Minimis Exceptions to
Full Compliance With the Jail Removal
Requirement; Proposed Rule**

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and
Delinquency Prevention

28 CFR Part 31

**Proposed Regulation To Establish an
OJJDP Policy and Criterion for De
Minimis Exceptions to Full Compliance
With the Jail Removal Requirement of
Section 223(a)(14) of the Juvenile
Justice and Delinquency Prevention
Act of 1974, as Amended**

AGENCY: Office of Justice Programs,
Office of Juvenile Justice and
Delinquency Prevention, Justice.

ACTION: Proposed rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 262(d) (42 U.S.C. 5672(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, *et. seq.* (JJDP Act), proposes to revise its Formula Grants Regulation to establish an OJJDP policy and criterion for determining full compliance with de minimis exceptions to the jail removal requirement of section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act, as amended.

DATE: Interested persons are invited to submit written comments on or before July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Director, State Relations and Assistance Division, OJJDP, 633 Indiana Avenue NW., Room 766, Washington, DC 20531, (202) 724-5924.

SUPPLEMENTARY INFORMATION:**I. Introduction and Background**

Section 223(a)(14) of the JJDP Act requires that States participating in the Formula Grants Program "(14) provide that, beginning after the five-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1989, promulgate regulations which make exceptions with regard to the detention of juveniles accused of non-status offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearance within twenty-four hours after being taken into custody (excluding weekends and holidays) * * *". Section 223(a)(14) limits this exception to areas that are outside a standard metropolitan statistical area.

Section 223(c) of the JJDP Act further provides that a State's

"(c) * * * Failure to achieve compliance with the requirements of subsection (a)(14) within the five-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that: (1) The State is in substantial compliance with such requirement through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed three additional years."

Section 31.303(f)(6)(iii) of the OJJDP Formula Grants Regulation, which was published in the June 20, 1985, *Federal Register*, at pages 25550-25561, 28 CFR Part 31, establishes three ways for a State to demonstrate full compliance with the section 223(a)(14) requirement. First, "Full compliance is achieved when a State demonstrates that the last submitted monitoring report, covering a full and actual 12 months of data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violations of section 223(a)(14)." (28 CFR 31.303(f)(6)(iii)).

The remaining two ways to demonstrate full compliance involve the legal concept of de minimis. First, a State may be found in full compliance with de minimis exceptions where all instances of noncompliance violated a State law, court rule, or other statewide executive or judicial policy; the instances of noncompliance do not indicate a pattern or practice; an enforcement mechanism exists; and, an acceptable plan has been developed to eliminate the noncompliant incidents (28 CFR 31.303(f)(6)(iii)(A)).

The second way a State may demonstrate full compliance with de minimis exceptions is to achieve a rate of noncompliant incidents, per 100,000 juvenile population in the State, that falls below the maximum rate determined by OJJDP to constitute a de minimis rate as set forth below and proposed to be added to the subject Formula Grants Regulation as 28 CFR 31.303(f)(6)(iii)(B). OJP Office of General Counsel Legal 76-7 provides the legal basis for the OJJDP to use the de minimis principle. That is, the OJJDP may tolerate a limited number of instances of noncompliance (the legal opinion addressed the deinstitutionalization of status offenders requirement) that are of "slight consequence" or "insignificant" in making a determination regarding a State's achieving full compliance.

A potential consideration in a State's ability to demonstrate full compliance with de minimis exceptions to jail removal is the presence of Federal wards. If public comments indicate the need to address this issue, a limited exceptional circumstance may be added to 28 CFR 31.303(f)(6)(iii)(B).

**II. Policy and Criterion for De Minimis
Exceptions to Full Compliance With the
Jail Removal Requirement**

The criterion presented below and set forth in the proposed regulation will be applied by OJJDP in determining whether a State has achieved and, once achieved, has maintained, a numerical finding of full compliance with de minimis exceptions with the jail and lockup removal requirement of section 223(a)(14). Also specified is the time frame for submitting information which each State must provide when requesting an initial or subsequent finding of full compliance with de minimis exceptions under 28 CFR 31.303(f)(6)(iii)(B).

Discussion of Criterion

The criterion for making a finding of full compliance with de minimis exceptions is that the incidents of noncompliance are insignificant or of slight consequence in terms of the total juvenile population in the state.

In applying this criterion, OJJDP will compare each State's noncompliance rate per 100,000 population under age 18 to the average rate that has been calculated for 12 states (three states from each of the four Bureau of Census regions). The 12 states selected by OJJDP were those having the lowest rates of noncompliance per 100,000 juvenile population, and which had an adequate system of monitoring for compliance. Those states using the non-MSA exception, provided for in Section 223(a)(14), were not included in calculating the average. Inclusion of these states would have created an artificially low average because the exception expires in 1989.

The information provided by the 12 States' 1986 Monitoring Reports indicated an average annual rate of nine (9) incidents of noncompliance per 100,000 juvenile population. Consequently, those states which have a noncompliance rate in excess of 9 per 100,000 juvenile population will be considered presumptively ineligible for a finding of full compliance with de minimis exceptions, pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

Where a State can demonstrate, however, that recently enacted changes

in State law which have gone into effect can reasonably be expected to have a substantial, significant and positive impact on the State's level of compliance, OJJDP will consider this exceptional circumstance in making its determination of full compliance with *de minimis* exceptions. This exceptional circumstance will only be applied where the legislation is expected to produce full (100%) compliance or full compliance with *de minimis* exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

OJJDP deems it to be a requirement of critical importance that all States requesting a subsequent finding of full compliance with *de minimis* exceptions annually demonstrate continued and meaningful progress toward 100 percent compliance in order to remain eligible for a finding of full compliance with *de minimis* exceptions pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

List of Subjects in 28 CFR Part 31

Grant programs-law, Juvenile delinquency, Reporting and recordkeeping requirement.

Proposed Regulation

PART 31—[AMENDED]

1. The authority citation for Part 31 continues to read as follows:

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

2. A new paragraph (f)(6)(iii)(B), currently designated as "Reserved" in 28 CFR 31.303, is added to read as follows:

§ 31.303 Substantive requirements.

- (f) * * *
- (6) * * *
- (iii) * * *

(B)(1) *Standard.* The State must demonstrate that each of the following requirements has been met.

(i) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and

(ii) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(2) *Exception.* When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with *de minimis* exceptions under the numerical *de minimis* standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the State's achieving full (100%) compliance or full compliance with *de minimis* exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(3) *Progress.* Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical *de minimis* standard set forth in paragraph (f)(6)(iii)(B)(1)(i) and (ii) of § 31.303, must annually demonstrate, in its request for a finding of full compliance with *de minimis* exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with *de minimis* exceptions.

(4) *Request Submission.* Determinations of full compliance and

full compliance with *de minimis* exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with *de minimis* exceptions under paragraph (f)(6)(iii)(A) or (B) of § 31.303. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's Formula Grant Award.

Executive Order 12291

This regulation does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) an effect on the economy of \$100 million or more, (b) major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This proposed rule, if promulgated, will not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

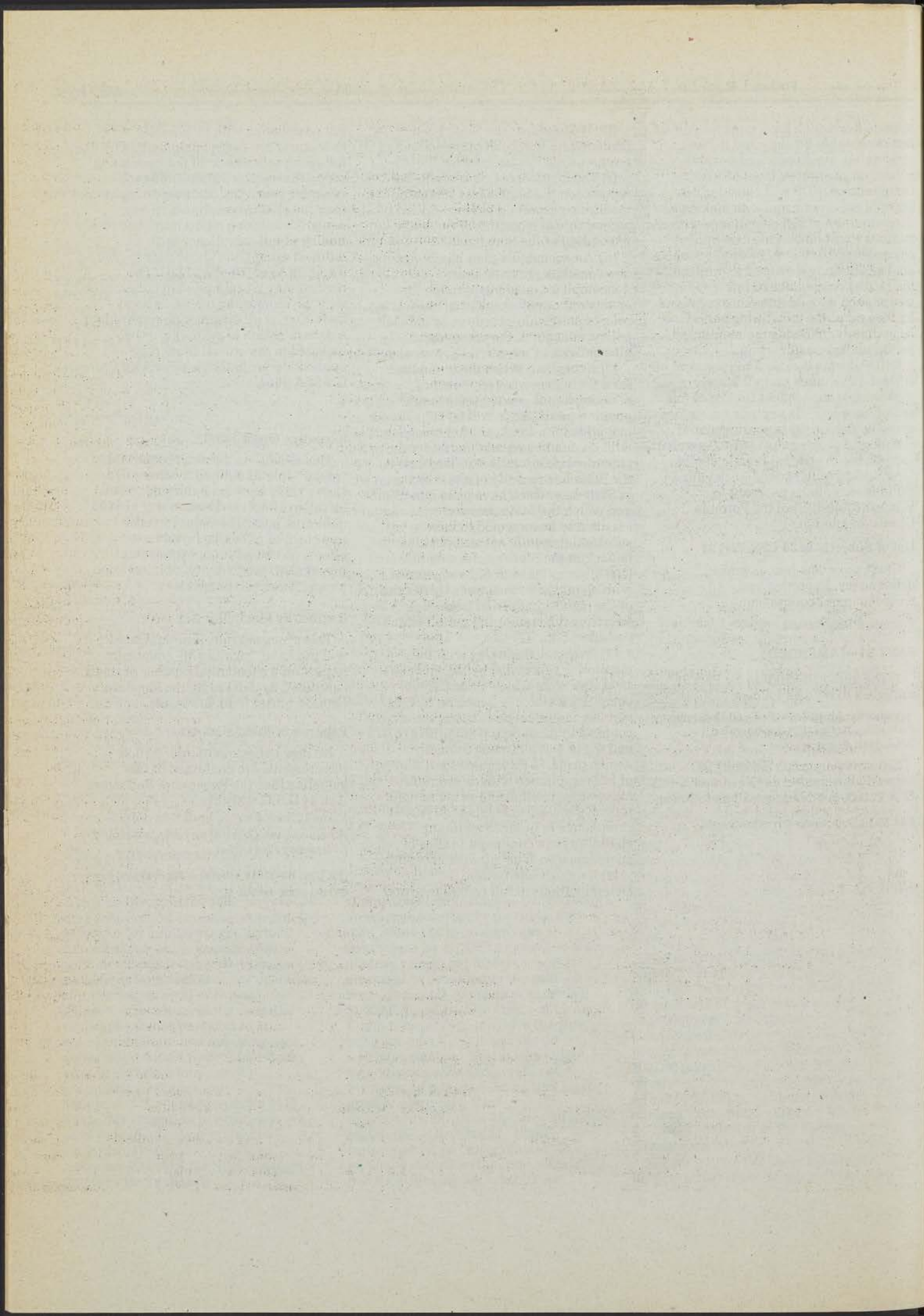
Paperwork Reduction Act

No new collection of information requirements are contained in this guideline (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Verne L. Speirs,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-12917 Filed 6-8-88; 8:45 am]

BILLING CODE 4410-18-M



Thursday
June 9, 1988

Part IV

Environmental Protection Agency

40 CFR Part 471

**Nonferrous Metals Forming and Metal
Powders Point Source Category Effluent
Limitations Guidelines, Pretreatment
Standards and New Source Performance
Standards; Proposed Regulation**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 471

[OW-FRL-3319-4]

Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing to amend 40 CFR Part 471 which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources in the nonferrous metals forming and metal powders point source category. Today's proposed amendments only affect facilities that conduct tube reducing operations in the nickel-cobalt forming subcategory (Subpart C) and in the zirconium-hafnium forming subcategory (Subpart I). EPA agreed to propose these amendments in a settlement agreement with General Electric Company and INCO Alloys International. The agreement settles a dispute between these companies and EPA that was the subject of petitions for review of the final nonferrous metals forming regulation promulgated by EPA on August 23, 1985 (50 FR 34242).

The proposed amendments include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct discharges; and (2) certain modifications to the pretreatment standards for new and existing indirect discharges (PSNS and PSES). After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATE: Comments on this proposal must be submitted on or before July 11, 1988.

ADDRESS: Send comments to Mr. George M. Jett, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: ITD Docket Clerk, Proposed Nonferrous Metals Forming Rule (WH-552).

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street SW., Washington, DC. The EPA information regulation (40 CFR Part

2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

- I. Legal Authority
- II. Background
 - A. Rulemaking
 - B. Settlement Agreement for Nonferrous Metals Forming
- III. Proposed Amendments to the Nonferrous Metals Forming Regulation
- IV. Environmental Impact of the Proposed Amendments to the Nonferrous Metals Forming Regulation
- V. Economic Impact of the Proposed Amendments
- VI. Solicitation of Comments
- VII. Executive Order 12291
- VIII. Regulatory Flexibility Analysis
- IX. OMB Review
- List of Subjects in 40 CFR Part 421

I. Legal Authority

The amendments described in this notice are proposed under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217 as amended by the Water Quality Act of 1987). These amendments are also being proposed in response to the Settlement Agreement in INCO Alloys International, Inc., and General Electric Co., v. U.S. Environmental Protection Agency, Nos. 86-3091 and 86-3092 (6th Cir.).

II. Background

A. Rulemaking

On March 5, 1984, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines, New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals forming and metal powders (nonferrous metals forming) point source category (49 FR 8112). The final regulation for the nonferrous metals forming point source category was promulgated on August 23, 1985 (50 FR 34242) and established effluent limitations guidelines and standards to control specific toxic, nonconventional and conventional pollutants for ten subcategories in the nonferrous metals forming and metal powders point source category. Only two of these

subcategories, the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I), are affected by today's proposal.

The subcategories are comprised of various elements or building blocks which are used to calculate the final effluent limits for each discharger. Today's proposal only affects the tube reducing building blocks in Subparts C and I. Tube reducing is a forming operation which may combine amines and nitrates or nitrites in the coolant-lubricant with the high energy input of the process to generate nitrosamine compounds in the wastewater discharge. In sampling conducted by the Agency, nitrosamines have been found in tube reducing process wastewaters. Accordingly, in the final regulation the Agency required that there be no discharge of process wastewater pollutants from tube reducing operations in Subpart C and I. The Agency costed contract hauling as the model treatment technology for these subcategories.

B. Settlement Agreement for Nonferrous Metals Forming

After publication of the nonferrous metals forming regulation, INCO Alloys International, General Electric Co., Oregon Metallurgical Corporation, Teledyne Wah Chang, AMAX Inc. and Westinghouse Corp. filed petitions for review of the regulation.

Oregon Metallurgical Corp., Westinghouse and Teledyne Wah Chang subsequently dismissed their petitions for review of the regulation. AMAX Inc. entered into a settlement agreement with EPA on June 29, 1987. That agreement is not the subject of this proposal. The two remaining petitioners, INCO Alloys International and General Electric Company entered into a settlement agreement with the Agency on November 5, 1986 which resolved all issues raised by these petitioners. That agreement, which is the subject of this proposed rulemaking, only affects the nickel-cobalt forming subcategory (Subpart C) and the zirconium-hafnium forming subcategory (Subpart I). Copies of the Settlement Agreement have been sent to all EPA Regional Offices and to applicable State permitting authorities.

As part of this Settlement Agreement, on November 5, 1986 the parties jointly requested the United States Court of Appeals for the Sixth Circuit to stay the effectiveness of those portions of 40 CFR Part 471 which EPA is proposing to amend, pending final action by EPA on the proposed amendments. On February 17, 1987 the Court entered an order staying the following sections of the

regulation promulgated on August 23, 1985: 40 CFR 471.31(d); 471.32(d); 471.33(d); 471.34(d); 471.35(d); 471.91(g); 471.92(g); 471.93(g); 471.94(g); and, 471.95(g). EPA is today proposing to amend these sections in accordance with the settlement agreement. All limitations and standards contained in the final nonferrous metals forming regulation published on August 23, 1985 which are not specifically listed in the attached proposed amendments are not affected by today's rulemaking.

III. Proposed Amendments to the Nonferrous Metals Forming and Metal Powders Regulation

The regulation promulgated in 1985 stated that there shall be no discharge of process wastewater pollutants from tube reducing spent lubricants. Since EPA found a nitrosamine compound (N-nitrosodiphenylamine) in a sample taken from a tube reducing spent lubricant used at one facility at a concentration of 28.2 mg/l, EPA established a zero discharge requirement to prevent the release of nitrosamine compounds into the environment from tube reducing spent lubricant wastewater. GE and Inco expressed concern that this regulation would require contract hauling of the process waste stream even in cases where there are no measurable amounts of nitrosamines. EPA now proposes to allow the discharge of tube reducing spent lubricant in the nickel-cobalt and zirconium-hafnium forming subcategories, as an alternative limitation, provided that the spent lubricant process wastewater is analyzed once a month and found not to contain concentrations of three nitrosamines in excess of the method detection limits established for EPA's approved test method 1625 (40 CFR Part 136). These nitrosamines and corresponding limits are 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine. These three nitrosamines are members of the family of nitrosamine compounds which are referenced in section 307 of the Clean Water Act of 1977. The Agency believes that demonstrating the presence or absence of these three nitrosamine compounds should indicate the presence or absence of the other nitrosamine compounds since they are all formed from the same precursors, i.e., nitrates or nitrates and amines. If, after six months of sampling, none of the samples of the tube reducing lubricant wastewater is found to contain nitrosamines above the concentrations stated above, the frequency of sampling may be reduced to once per quarter. It

should be noted that under the alternative limitation we are proposing, there would be no mass allowance for any pollutant discharged.

Nitrosamines can be formed in the presence of precursors under the conditions created by the tube reducing process. If nitrosamines are found in tube reducing spent lubricant, the best method to remove them is to change the tube reducing lubricant to a new formulation in which the precursors are not present; if the precursors are absent, then nitrosamines are not likely to be formed. The Agency believes this control method is technically feasible and should not result in any economic impact beyond that expected under the original regulation. The cost of the new tube reducing lubricant should not be significantly more than the cost of the old tube reducing lubricant. In any case, the facility retains the option of complying with the current regulation (i.e., no discharge of process wastewater pollutants), which as stated earlier, is based on contract hauling. EPA determined that this technology was economically achievable during the initial nonferrous metals forming rulemaking. For all these reasons, EPA finds that this proposed amendment is economically achievable. This alternative limitation should result in similar effluent reduction benefits as the previously promulgated limitation since plants will be prevented from discharging measurable amounts of nitrosamines. The proposed amendment has the additional advantage of creating an incentive to avoid the formation of nitrosamine compounds in the tube reducing process. All other relevant findings made in the original rulemaking are incorporated by reference into this proposal.

Subparagraph (5) of the proposed amendment specifies that the concentration limits for the three nitrosamine compounds listed in subparagraph (2) apply at the point of discharge from the tube reducing process. This provision is intended to make clear that the discharge limits of subparagraph (2), which are expressed in terms of concentration, are not to be met merely by means of dilution. It does not mean, however, that the wastewater must be *sampled* at the point of discharge from the tube reducing process. Nor does it imply that the wastewater must be sampled before being treated or commingled with other wastewater.

To the contrary, because of difficulties in analyzing for nitrosamines at very low concentration levels in an oily matrix, it may very well be necessary to

treat the tube reducing spent lubricant wastewater before sampling to determine compliance with subparagraph (2). And, in order to treat the wastewater in an economical manner, it may very well be necessary to commingle it with other wastewater before treatment. Subparagraph (5) allows commingling or treatment of the tube reducing spent lubricant wastewater before sampling. However, if commingling occurs before sampling, any dilution caused by the other wastewaters must be taken into account in determining compliance with the concentration limits of subparagraph (2). This would mean that the concentrations of the three nitrosamine compounds in the commingled wastewater would have to be sufficiently lower than the discharge concentrations specified in subparagraph (2), so that, after back-calculating to account for the dilution, it can be determined that the concentrations of the three nitrosamine compounds at the point of discharge from the tube reducing process did not exceed the concentration limits set forth in subparagraph (2). Subparagraph (5) provides that, where sampling occurs after commingling, the analytical method used must be sensitive enough to measure the three nitrosamine compounds at levels sufficiently low as to permit a back-calculation to account for the dilution.

IV. Environmental Impact of the Proposed Amendments to the Nonferrous Metals Forming Regulation

The proposed amendment described above may affect 58 facilities in the nickel-cobalt forming and zirconium-hafnium forming subcategories. Under this proposal tube reducing operations would be allowed to discharge wastewater under controlled conditions but would not be allowed to increase the mass of pollutants allowed to be discharged by the August 1985 regulation. Therefore, this regulation should not have any significant environmental impact.

V. Economic Impact of the Proposed Amendments

The proposed amendments do not alter the model technologies for complying with the nonferrous metals forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 50 FR 34242). EPA concluded at that time that the regulation was economically achievable. Since today's proposed amendments are based on the same model technologies,

EPA's conclusions as to economic impact and achievability are unaffected.

VI. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of \$100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Public Law 96-354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 23, 1985 final nonferrous metals forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (49 FR 8775). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 471

Metals, Nonferrous metals forming, Water pollution control, Waste treatment and disposal.

Dated: June 2, 1988.

Lee M. Thomas,
Administrator.

For the reasons stated above, EPA proposes to amend 40 CFR Part 471 as follows:

PART 471—NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY

1. The authority citation for Part 471 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

2. Section 471.31 is amended by revising paragraph (d) to read as follows:

§ 471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(d) *Tube Reducing Spent Lubricant—Subpart C—BPT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the

sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

3. Section 471.32 is amended by revising paragraph (d) to read as follows:

§ 471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(d) *Tube Reducing Spent Lubricant—Subpart C—BAT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be

made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

- (i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or
- (ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or
- (iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

- (i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and
- (ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

4. Section 471.33 is amended by revising paragraph (d) to read as follows:

§ 471.33 New source performance standards (NSPS).

* * * * *

(d) *Tube Reducing Spent Lubricant—Subpart C—NSPS.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

- (i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or
- (ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or
- (iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube

reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

- (i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and
- (ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

5. Section 471.34 is amended by revising paragraph (d) to read as follows:

§ 471.34 Pretreatment standards for existing sources (PSES).

* * * * *

(d) *Tube Reducing Spent Lubrication—Subpart C—PSES.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further

discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

6. Section 471.35 is amended by revising paragraph (d) to read as follows:

§ 471.35 Pretreatment standards for new sources (PSNS).

(d) *Tube Reducing Spent Lubricant—Subpart C—PSNS.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (d)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time

the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (d)(2) of this section, the actions described in paragraph (d)(4) of this section shall be taken, and the demonstration required under paragraph (d)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (d)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (d)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (d)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (d)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (d)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

7. Section 471.91 is amended by revising paragraph (g) to read as follows:

§ 471.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(g) *Tube Reducing Spent Lubricant—Subpart I—BPT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply

at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

- (i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and
- (ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

8. Section 471.92 is amended by revising paragraph (g) to read as follows:

§ 471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(g) *Tube Reducing Spent Lubricant—Subpart I—BAT.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged; provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the

sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

9. Section 471.93 is amended by revising paragraph (g) to read as follows:

§ 471.93 New source performance standards (NSPS).

(g) *Tube Reducing spent Lubricant—Subpart I—NSPS.*

(1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (g)(2) of this section shall be made once per month until the demonstration has been made for all

three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the NPDES issuing authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

10. Section 471.94 is amended by revising paragraph (g) to read as follows:

§ 471.94 Pretreatment standards for existing sources (PSES).

(g) *Tube Reducing Spent Lubricant—Subpart I—PSES.* (1) There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (a)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is no further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

11. Section 471.95 is amended by revising paragraph (g) to read as follows:

§ 471.95 Pretreatment standards for new sources (PSNS).

* * * * *

(g) *Tube Reducing Spent Lubrication—Subpart C—PSNS.* (1)

There shall be no discharge of process wastewater pollutants except as provided under paragraph (g)(2) of this section.

(2) Process wastewater pollutants may be discharged, with no allowance for any pollutants discharged, provided the facility owner or operator demonstrates, on the basis of analytical methods set forth in or approved pursuant to 40 CFR Part 136, that the concentrations of nitrosamine compounds in the wastewater discharged from the tube reducing process do not exceed 0.050 mg/l of N-nitrosodimethylamine, 0.020 mg/l of N-nitrosodiphenylamine, and 0.020 mg/l of N-nitrosodi-n-propylamine.

(3) The demonstration required under paragraph (d)(2) of this section shall be made once per month until the demonstration has been made for all three nitrosamine compounds for six consecutive months, after which time the demonstration may be made once per quarter. If a sample is found to

contain any of the foregoing nitrosamine compounds at concentrations greater than those specified in paragraph (g)(2) of this section, the actions described in paragraph (g)(4) of this section shall be taken, and the demonstration required under paragraph (g)(2) of this section shall be made once per month until it has been made for all three nitrosamine compounds for six consecutive months.

(4) If sampling results show that any of the foregoing nitrosamine compounds is present in the process wastewater at concentrations greater than those specified in paragraph (g)(2) of this section, the facility owner or operator shall ensure that, within thirty days of receiving written notification of the sampling results, there is not further discharge of tube reducing spent lubricant wastewater until the owner or operator:

(i) Performs a subsequent analysis which demonstrates that the concentrations of the foregoing nitrosamine compounds do not exceed the levels specified in paragraph (g)(2) of this section; or

(ii) Substitutes a new tube reducing lubricant and thereafter complies with the requirements of paragraph (g)(3) of this section; or

(iii) Determines the source of the pollutant whose concentration exceeded the level specified in paragraph (g)(2) of this section and demonstrates to the satisfaction of the POTW control authority that such source has been eliminated.

(5) The concentration limits specified in paragraph (g)(2) of this section apply at the point of discharge from the tube reducing process. However, sampling after the tube reducing wastewater has been commingled with other wastewaters is permitted if:

(i) Any dilution caused by the other wastewaters is taken into account in determining the appropriate (i.e., lower) allowable discharge concentration; and

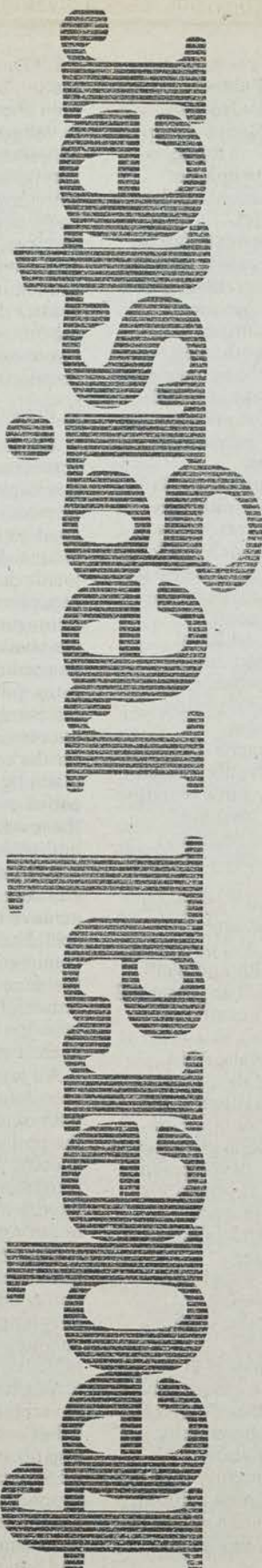
(ii) An analytical method of sufficient sensitivity is used to measure the levels of each of the foregoing nitrosamine compounds in the wastewaters being sampled.

* * * * *

[FR Doc. 88-12958 Filed 6-8-88; 8:45 am]

BILLING CODE 6560-50-M

Thursday
June 9, 1988



Part V

Department of Health and Human Services

Office of Human Development Services

Administration for Native Americans;
Availability of Financial Assistance;
Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13612-891]

Administration for Native Americans; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), Department of Health and Human Services.

ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, and Native American Pacific Islanders social and economic development projects.

SUMMARY: The Administration for Native Americans announces the availability of fiscal year 1989 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Native American tribes and organizations through the support of both social and economic development projects and the strengthening of local governance capabilities.

DATES: The closing dates for receipt of applications are October 14, 1988, February 10, 1989 and May 26, 1989.

FOR FURTHER INFORMATION CONTACT:

Lucille Dawson (202) 245-7727 or Dwaine LeBeau (202) 245-7714, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201-0001.

SUPPLEMENTARY INFORMATION

A. Introduction and Program Purpose

The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Indian Tribes and American Indian, Native Hawaiian, and Native American Pacific Islanders groups through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Pub. L. 93-644, 88 Stat. 2324, 42 U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American

Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders (American Samoan Natives and indigenous peoples of Guam and the Commonwealth of the Northern Mariana Islands).

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) **Governance:** To assist tribal governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) **Economic Development:** To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) **Social Development:** To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. Expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress.

ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

All projects funded by ANA must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of specific projects is not for those programs which operate indefinitely or have need for ANA funding on a recurring basis.

Goal 1: Governance. Effective governance is a necessary foundation and condition for social and economic development of Indian tribes and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal governments; (2) increasing the ability of tribes and Native American groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans

are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes and Native American groups can better define and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Goal 2: Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA expects tribal governments and other Native American organizations to move toward coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (Federal and non-Federal) toward locally determined priorities, and affect that community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing dependency on public funds.

C. Eligible Applicants

The following organizations which are NOT current grantees of ANA are eligible to apply for a grant award under this announcement:

- Federally recognized Indian Tribes;

- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated non-profit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Incorporated non-profit Native Hawaiian organizations;
- National or regional incorporated non-profit Native American organizations with Native American community-specific objectives
- Non-profit incorporated Native American Pacific Islander organizations whose primary purpose is serving the indigenous peoples of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States. Funding for Native American Pacific Islanders projects is subject to the availability of specific appropriations during FY 1989.

With the exception of Alaska Native grantees, current grantees of ANA whose project period terminates in Fiscal Year 1989 (October 1, 1988—September 30, 1989) are also eligible to apply. (The Project Period is noted in Block 9 of the "Financial Assistance Award".) This program announcement does not apply to current grantees with multi-year projects when applying for continuation funding for their second or third budget periods.

Alaska Native applicants are not eligible under this program announcement because a separate program announcement for Fiscal Year 1989 funding will be published specifically for Alaska Native applicants.

D. Available Funds

Approximately \$15 million of financial assistance is available under this program announcement for American Indian and Native Hawaiian projects.

Up to \$500,000 is available under this announcement for Native American Pacific Islanders projects, subject to the availability of specific appropriations, as provided for in section 816(c) of the Native American Programs Act of 1974, as amended.

Each tribe or Native American organization is eligible to receive no more than one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake more complex and in-depth projects than can be completed in one

year. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three year period. It should also be noted that funding after the first budget period of a multi-year project will be non-competitive.

The budget period for each multi-year project grant will be 12 months. The non-competitive funding for the second and third years will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, ANA's continued belief that the project is in the public interest, and compliance with applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with Section 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980-0016. The application kits containing the necessary forms may be obtained from: Edith Clark, Administration for Native Americans, Office of Human Development Services, DHHS, Room 5300 North Building, 330 Independence Avenue, SW., Washington, DC 20201-0001, Attention: No. 13612-891, (202) 245-7727.

Application Submission

One signed original and two copies of the grant application, including all

attachments, must be hand delivered or mailed to: Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, Hubert H. Humphrey Building, Room 345F, 200 Independence Avenue, SW., Washington, DC 20201-0001, Attention: ANA 13612-891.

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.
- The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA). The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted in a timely manner under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;
- That the application proposes project objectives which are responsive to the Program Announcement; and,
- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project and to determine its likelihood of success. A proposed project should reflect the purposes of ANA's SEDS philosophy and program goals (as described under *Introduction and Program Purpose* of this announcement) and increase the probability of greater self-sufficiency for a specific tribe or Native American community. The five programmatic and management criteria are closely related to each other and are considered in judging the overall quality of an application. Points will be given only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application presents long-range goals, within the context of the community's comprehensive social and economic development goals, which the proposed project address. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist and be coordinated with the project are described. These resources may be human, natural or financial in nature, including other Federal and non-Federal resources.

(2) Capabilities and Qualifications. (10 points)

Resumes or position descriptions of key personnel, including those of consultants, are included. Resumes indicate that the staff are qualified to carry out the project activities and that overall quality project management is assured.

(3) Project Objectives and Activities. (45 points)

The application proposes specific project objectives and activities. The

objective work plan is presented in annual increments for all project objectives and activities and demonstrates that these objectives and activities:

- Are measurable and quantifiable;
- Are based on a fully described and locally determined balanced strategy for governance and for social and economic development;
- Clearly address the community's long range goals;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective and major activities under each objective will be accomplished; and
- Specify who will accomplish the activities under each objective.

(4) Results or Benefits Expected. (20 points)

The proposed project will result in specific, measurable outcomes which will clearly contribute to the overall development of the community and its members. The specific information provided on expected outcomes is the basis upon which the outcomes can be evaluated at the end of the project.

(5) Budget. (10 points)

The budget fully explains and justifies the line items in the budget categories in Part III, Section B of the Budget Information. Sufficient detail is included to facilitate determination of allowability, relevance to the project, and cost benefits for the entire length of the proposed project.

J. Guidance to Applicants

The following policies, pointers, and instructions are provided to assist applicants in developing a competitive application.

(1) Program Guidance

ANA reviewers of applications have indicated they are better able to judge the feasibility and practicality of a proposed economic development project when the applicant has utilized a business plan to discuss the project. ANA has included sample business plans in the application kit. It is strongly suggested that an applicant use these as a guide in the development of an application. The more information given a review panel on a proposed business project, the better able it is to evaluate the potential for success.

- ANA does not fund on the basis of need. ANA funds projects presenting the strongest prospects for fulfilling a community's governance, social, or economic development.
- In discussing the problems or needs of the community being addressed in the application, sufficient background and/

or history of the community should be included to ensure that the feasibility of the proposed project will be understood by reviewers.

- The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community.

- In Part IV, Section A of the application package, *Resources Available to the Proposed Project*, the applicant should address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions to those settlements, and explain the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.

- Supporting documentation or other testimonies from concerned interests other than the applicant may be used to provide support for the feasibility of the project.

(2) Technical Guidance

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

- ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

- Two copies of the application plus the original are required.

- Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.

- There is no maximum or minimum amount of Federal funds that may be requested.

- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

- ANA will not fund essentially identical projects serving the same constituency.

- ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

- An application from a Federally recognized tribe must be from the governing body.

- The Cover Page (included in the Kit) should be the first page of an application.

- The Approach page (Section B, Part IV) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.

- If a profit making venture is being proposed, revenue must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income and used in accordance with the deduction alternative. (See 45 CFR 74.42(c).)

- Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs multiple years to complete) and describe the results to be achieved by the end of each budget period of the total project period.

- The applicant should specify the entire project period length on the cover page of the Form 424, Block 16, not the length of the first budget period. In cases where the application's contents propose one length of project period and the Form 424 cover page specifies a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the governing one.

(3) *Projects or Activities that generally will not meet the purposes of this Announcement.*

The following activities are inconsistent with the policies of ANA:

- Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

- Proposed feasibility studies, business plans, marketing plans, or written materials such as manuals that are not an integral part of the applicant's long-range development plan. ANA is not interested in funding 'wish lists' of business possibilities. ANA expects evidence of solid investment of time and thought on the

part of the applicant to any development of business plans, etc.

- On-going social service delivery, expansion or continuation of existing social service delivery programs.

- Core administrative functions or other activities that essentially support the applicant's administrative functions.

- Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development).

- Project plans or strategies clearly not determined or developed at the local level.

- Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes.

- Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity.

- Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at the end of the project period.

- Lack of demonstrated coordination with non-ANA resources.

- Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project.

- The purchase or real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch. 3, Sec. E.).

- Use of ANA grant funds for a monetary share of capital investment for a business.

ANA will critically evaluate applications within which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment), franchises or management fees are major components of the Federal share of the budget.

During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

ANA will also critically evaluate projects reflecting heavy reliance on use of outside consultants, especially where consultants have prepared the application and have provided themselves a major role in the proposed project.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 14, 1988, February 10, 1989 and May 26, 1989.

L. Receipt of Applications

Applications must either be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. ANA shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not

waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 28, 1988.

William Lynn Engles,

Commissioner, Administration for Native Americans.

Approved: May 31, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-12956 Filed 6-8-88; 8:45 am]

BILLING CODE 4130-01-M

Thursday
June 9, 1988

Part VI

Department of Justice

Office of Juvenile Programs

Office of Juvenile Justice and
Delinquency Prevention

Removal of Juveniles From Adult Jails
and Lockups, Grants; Notice of
Solicitation of Applications

DEPARTMENT OF JUSTICE**Office of Justice Programs****Office of Juvenile Justice and
Delinquency Prevention****Removal of Juveniles From Adult Jails
and Lockups, Grants**

AGENCY: Office of Justice Programs,
Office of Juvenile Justice and
Delinquency Prevention.

ACTION: Notice of a solicitation of applications for a grant program to provide support to selected State agencies to enhance statewide strategies to achieve full compliance with the Juvenile Justice and Delinquency Prevention (JJDP) Act provision, section 223(a)(14), Removal of Juveniles from Adult Jails and Lockups.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 223(b)(6) (42 U.S.C. 5634(b)(6)) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), announces a Special Emphasis program entitled: Removal of Juveniles from Adult Jails and Lockups: Assistance for Eligible States Currently Not In Substantial Compliance with section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act.

DATES: Applications must be delivered to OJJDP by 5:00 p.m. e.s.t., July 25, 1988. Applications meeting all requirements and conditions will be awarded no later than September 30, 1988. Applications will be processed as they are received. A letter of intent to apply must be delivered to OJJDP on or before July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Stein, State Relations and Assistance Division (202/724-5921), OJJDP, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:**I. Introduction**

To assist states in coming into full compliance with the jail removal mandate, OJJDP is making available \$3 million of Fiscal Year 1988 Special Emphasis funds under Part B, Subpart II of Title II of the JJDP Act for awards to States and territories that have failed to demonstrate substantial compliance with the requirement for removal of juveniles from adult jails and lockups pursuant to section 223(a)(14). OJJDP projects that funds will be made available to 21 eligible states and one territory based upon their ability to respond to the conditions of this program. The base allocation for eligible states will be \$100,000, and \$25,000 for the territory, with the remainder distributed on the basis of relative percentage of population under 18 years of age. The maximum initial allocation will be \$200,000. In the event an eligible state declines to apply, those funds will be redistributed among participating states.

The funds must be used to support jail removal strategies including training, the development and implementation of operational guidelines, the establishment and operation of temporary secure and nonsecure holding facilities, or reimbursement arrangements to units of local government for payment to service providers. States not receiving funding from the FY 1987 Special Emphasis Jail Removal Initiative may use a maximum of \$50,000 for staffing and planning purposes in relation to removing the barriers to achievement of jail removal.

II. Eligibility

Eligible to apply are state agencies designated under section 223(a)(1) of the JJDP Act in states and territories where substantial compliance with section 223(a)(14) was not demonstrated in the State's 1986 Monitoring Report, submitted pursuant to section 223(a)(15) of the JJDP Act. Excluded from eligibility are those states which, based upon the

1986 Monitoring Report, cannot demonstrate compliance with the requirements of section 223(a)(12)(A), the deinstitutionalization of status offenders provision of the Act. Also excluded are those states, in compliance with section 223(a)(12)(A), which, pursuant to their 1986 Monitoring Reports, will be in full compliance with de minimis exceptions of section 223(a)(14) when the numerical rate of the de minimis policy is issued by OJJDP. Eligible states and the territory are identified below:

Alaska
Colorado
Florida
Idaho
Iowa
Illinois
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Nebraska
New Hampshire
Northern Mariana Islands
Oklahoma
South Carolina
Utah
Vermont
Wisconsin

III. Notice to State Agencies

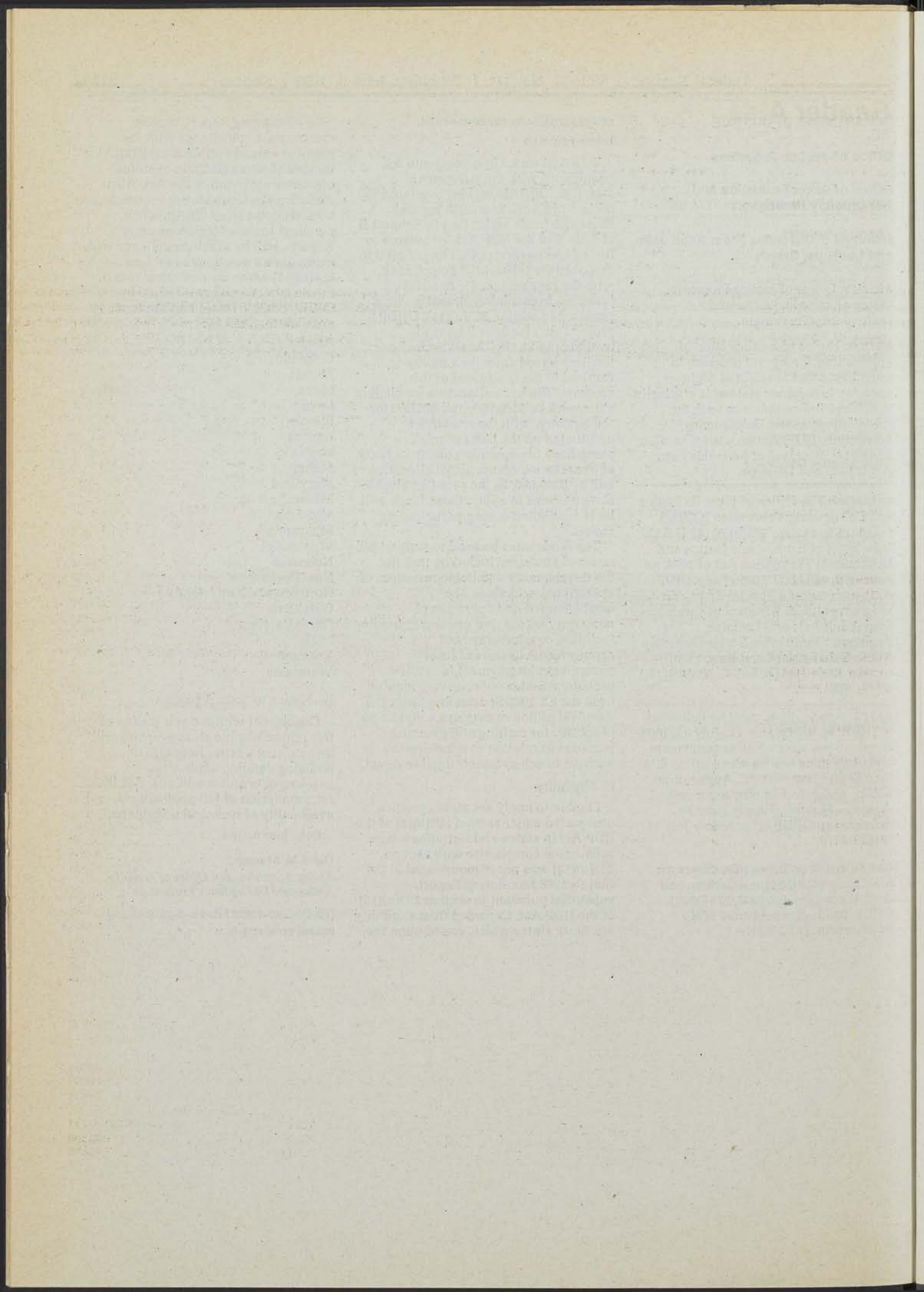
Concurrent with the publication of this notice, eligible state agencies will be receiving a letter from OJJDP outlining detailed application requirements and conditions, deadlines for submission of full applications, and availability of technical assistance.

Date: June 6, 1988.

Diane M. Munson,
Acting Administrator, Office of Juvenile
Justice and Delinquency Prevention.

[FR Doc. 88-13016 Filed 6-8-88; 8:45 am]

BILLING CODE 4410-18-M



Reader Aids

Federal Register

Vol. 53, No. 111

Thursday, June 9, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

19879-20088	1
20089-20274	2
20275-20594	3
20595-20806	6
20807-21404	7
21405-21618	8
21619-21790	9

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:	
Presidential Determinations:	
No. 88-15 of	
May 20, 1988	20595
No. 88-16 of	
May 20, 1988	21405
No. 88-18 of	
June 3, 1988	21407

5 CFR

307	20807
316	20807
752	21619

7 CFR

28	20089
58	20275
250	20416, 20597
405	20278
440	20279
713	20280
770	20280
795	21409
910	20599
911	21624
915	20599, 21624
918	21624
923	21624
944	20599
982	21624
987	19879
989	19880
998	20290
1033	21626
1046	21626
1413	20280
1421	20280
1425	19882
1470	20280
2003	20090

Proposed Rules:

68	20636
401	20331-20333, 21455
905	20121
907	21651
908	21651
928	20121
998	21666
1230	21456
1446	19923
1930	21460
1944	19924

8 CFR

274a	20086
------	-------

9 CFR

92	20306
331	20099
381	20099

10 CFR

35	21627
50	20603
625	20508
Proposed Rules:	
2	20335
50	19930, 20856
71	21550

12 CFR

4	20611
208	20808
261	20812
583	20611
606	19884
Proposed Rules:	
225	21462
575	21474
576	21474
577	21474
611	20637
612	20637
618	20637, 20647
620	20637
704	20122

13 CFR

121	21547
Proposed Rules:	
121	20857
124	21482

14 CFR

39	20101, 20625-20830, 21411, 21412, 21628, 21630
71	20102, 20414, 20832, 20833, 21396
91	20103
95	20264
135	20264

Proposed Rules:

Ch. I	20124
21	20860
23	20860
39	20414, 21489, 21669
71	20864
73	20125
75	20126

15 CFR

390	20833
-----	-------

16 CFR

13	20834
444	19893
500	20834
Proposed Rules:	
13	19930, 20127, 20131
1500	20865
1501	20865

17 CFR			
Proposed Rules:			
1.....	21490		
210.....	21670		
240.....	21670		
249.....	21670		
270.....	21670		
274.....	21670		
18 CFR			
271.....	21415		
284.....	20835		
19 CFR			
132.....	19896		
134.....	20836		
Proposed Rules:			
134.....	20869		
177.....	19933		
20 CFR			
Proposed Rules:			
205.....	20136		
404.....	21685, 21687		
416.....	21685		
21 CFR			
172.....	20837-20842, 21631		
184.....	20936		
186.....	20936		
193.....	20907		
201.....	21633		
510.....	20842		
522.....	20842		
548.....	20842		
558.....	20842		
561.....	20307		
862.....	21447		
Proposed Rules:			
175.....	20335		
176.....	20335		
177.....	20335		
178.....	20335		
1010.....	20137		
1308.....	21450		
23 CFR			
650.....	21637		
24 CFR			
8.....	20216		
35.....	20790		
200.....	20790		
201.....	19897		
203.....	19897		
234.....	19897		
510.....	20790		
570.....	20790		
882.....	20790		
885.....	19899		
886.....	20790		
941.....	20790		
965.....	20790		
968.....	20790		
Proposed Rules:			
208.....	20649		
596.....	20556		
25 CFR			
Proposed Rules:			
61.....	20335		
26 CFR			
1.....	20308, 20612-20614, 20718		
602.....	20308		
Proposed Rules:			
1.....	20337, 20650, 20651, 20719, 21688		
28 CFR			
Proposed Rules:			
31.....	21770		
29 CFR			
Proposed Rules:			
1910.....	20960, 21694		
30 CFR			
701.....	21764		
800.....	21764		
816.....	21764		
817.....	21764		
904.....	19903, 21450		
Proposed Rules:			
916.....	21494		
918.....	20338		
936.....	19934		
944.....	20338		
31 CFR			
565.....	20566		
32 CFR			
114.....	20843		
285.....	19905		
Proposed Rules:			
199.....	20576-20592		
33 CFR			
100.....	19906, 20319		
110.....	20319, 20617		
117.....	20320		
Proposed Rules:			
110.....	20339, 20652		
162.....	20339		
165.....	20339, 20653		
34 CFR			
562.....	21400		
36 CFR			
Proposed Rules:			
327.....	21495		
37 CFR			
Proposed Rules:			
10.....	20871		
201.....	20347		
38 CFR			
13.....	20618		
Proposed Rules:			
19.....	20653		
40 CFR			
52.....	20321, 21638		
147.....	21450		
180.....	19907, 20322, 21451, 21452		
232.....	20764		
233.....	20764		
261.....	20103, 21639		
271.....	20845		
761.....	21641		
796.....	21641		
Proposed Rules:			
52.....	20347		
60.....	20139		
80.....	21500		
81.....	20139, 20722		
82.....	20718		
86.....	21500		
180.....	20872		
228.....	19934		
261.....	20140, 20350		
264.....	20738		
265.....	20738		
270.....	20738		
471.....	21774		
600.....	21500		
763.....	19945		
41 CFR			
Proposed Rules:			
101-41.....	19946		
42 CFR			
400.....	21762		
431.....	20448		
435.....	20448		
440.....	20448		
442.....	20448		
483.....	20448		
Proposed Rules:			
417.....	21696		
435.....	19950		
440.....	19950		
441.....	19950		
43 CFR			
Public Land Order:			
6679.....	20846		
Proposed Rules:			
11.....	20143		
44 CFR			
64.....	19907, 19909, 20846		
Proposed Rules:			
67.....	21705		
45 CFR			
302.....	21642		
303.....	21642		
Proposed Rules:			
670.....	19964		
46 CFR			
69.....	20619		
77.....	20623		
96.....	20623		
195.....	20623		
586.....	20847		
Proposed Rules:			
10.....	20654		
15.....	20654		
47 CFR			
73.....	19912, 19913, 20624-20626, 21645, 21646, 21762		
94.....	21453		
Proposed Rules:			
1.....	20146		
25.....	20146		
73.....	19964-19966, 20658, 20659		
48 CFR			
204.....	20626		
205.....	20626		
206.....	20626		
209.....	20631		
219.....	20626		
226.....	20626		
227.....	20632		
235.....	20626		
252.....	20626, 20631, 20632		
970.....	21646		
Proposed Rules:			
215.....	19966		
252.....	19966		
49 CFR			
30.....	19914		
566.....	20119		
1035.....	20853		
1104.....	20853		
1115.....	20853		
Proposed Rules:			
383.....	20147		
391.....	20147		
392.....	20147		
571.....	20659		
604.....	20660		
1002.....	19969		
50 CFR			
23.....	19919		
253.....	20323		
301.....	20327		
652.....	20854		
661.....	20119		
663.....	20634		
672.....	19921, 21649		
675.....	21454		
Proposed Rules:			
Ch. VI.....	20661		
20.....	20874		
644.....	21501		
661.....	19971		

LIST OF PUBLIC LAWS

Last List May 25, 1988

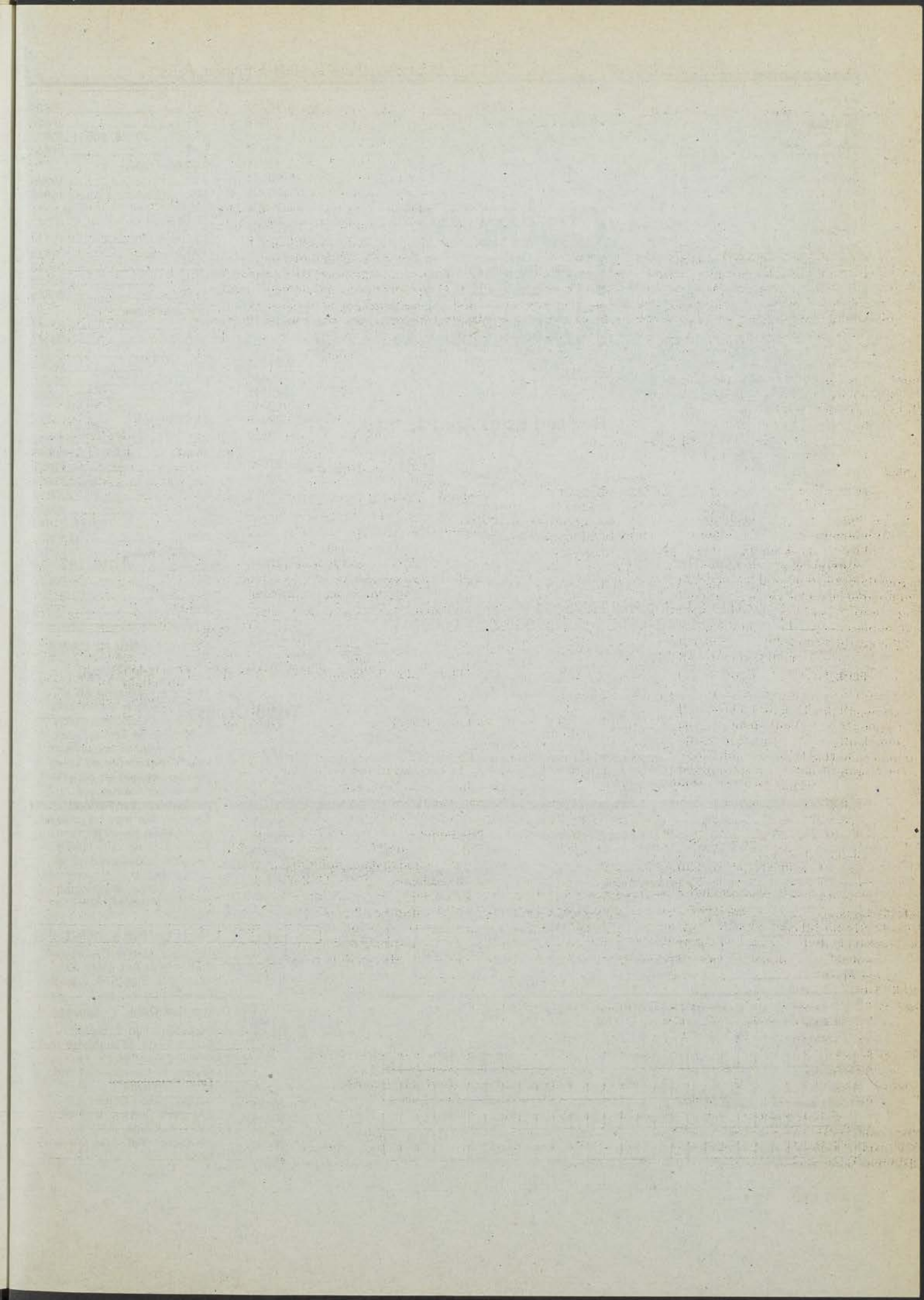
This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1430/Pub. L. 100-324

Merchant Marine Decorations and Medals Act. (May 30, 1988; 102 Stat. 576; 3 pages) Price: \$1.00

H.R. 4083/Pub. L. 100-325

To amend title 5, United States Code, to authorize the establishment of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, and for other purposes. (May 30, 1988; 102 Stat. 579; 5 pages) Price: \$1.00



Code of Federal Regulations

Revised as of April 1, 1988

Quantity	Volume	Price	Amount
	Title 26—Internal Revenue (Parts 40-49) Stock No. 869-004-00096-1	\$13.00	\$
		Total Order	\$

Please do not detach

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

							-	
--	--	--	--	--	--	--	---	--

Order No. _____



Total charges \$_____ Fill in the boxes below

[illegible]

Expiration Date
Month/Year

Name—First, Last

Street address

[illegible]

City _____ State _____ ZIP Code _____

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

Quantity	Charges
100	100
200	200
300	300
400	400
500	500
600	600
700	700
800	800
900	900
1000	1000
1100	1100
1200	1200
1300	1300
1400	1400
1500	1500
1600	1600
1700	1700
1800	1800
1900	1900
2000	2000
2100	2100
2200	2200
2300	2300
2400	2400
2500	2500
2600	2600
2700	2700
2800	2800
2900	2900
3000	3000
3100	3100
3200	3200
3300	3300
3400	3400
3500	3500
3600	3600
3700	3700
3800	3800
3900	3900
4000	4000
4100	4100
4200	4200
4300	4300
4400	4400
4500	4500
4600	4600
4700	4700
4800	4800
4900	4900
5000	5000
5100	5100
5200	5200
5300	5300
5400	5400
5500	5500
5600	5600
5700	5700
5800	5800
5900	5900
6000	6000
6100	6100
6200	6200
6300	6300
6400	6400
6500	6500
6600	6600
6700	6700
6800	6800
6900	6900
7000	7000
7100	7100
7200	7200
7300	7300
7400	7400
7500	7500
7600	7600
7700	7700
7800	7800
7900	7900
8000	8000
8100	8100
8200	8200
8300	8300
8400	8400
8500	8500
8600	8600
8700	8700
8800	8800
8900	8900
9000	9000
9100	9100
9200	9200
9300	9300
9400	9400
9500	9500
9600	9600
9700	9700
9800	9800
9900	9900
10000	10000

Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	